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SEP 18 1995

HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN**

CHURCH OF SCIENTOLOGY INTERNATIONAL,))
a California not-for-profit religious corporation,))

Plaintiff,))

vs.))

GERALD ARMSTRONG; MICHAEL WALTON;))
THE GERALD ARMSTRONG CORPORATION,))
a California for-profit))
corporation; DOES 1 through 100,))
inclusive,))

Defendants.))

No. 157 680

DEFENDANT'S OPPOSITION TO
MOTION FOR SUMMARY
ADJUDICATION ON THE TWENTIETH
CAUSE OF ACTION

Date: September 29, 1995
Time: 9:00 a.m.
Dept: One (1)
Trial Date: None Set

RECEIVED

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1 **I. INTRODUCTION**

2 While the religious beliefs of Gerald Armstrong may seem ludicrous and incredible to some, his
3 right to maintain those beliefs is the subject of one of the Constitution's most dear protections, freedom of
4 religion. At first blush it is difficult to overcome the inferences which arise from the fact that Armstrong
5 received \$800,000 from Scientology to keep his mouth shut, but that is not what Scientology paid him to
6 do. It paid him to dismiss his cross-complaint and mutually agreed to maintain confidentiality as to him in
7 consideration for his reciprocal promise. When Scientology breached this promise, Armstrong was free to
8 speak about it.

9 Armstrong asks the Court to not continue to be misled by Scientology's long list of Armstrong's
10 actions which it claims to violate the agreement. Indeed, such would have violated the agreement had
11 Scientology not induced Armstrong to enter it based on the fraudulent representations that it wanted a
12 chance to forsake its practice of fair game, both as to the world in general and Armstrong in particular. Of
13 course, continuing to engage in such conduct invalidates the agreement Scientology would have this Court
14 enforce. After all, why would the man - whose defense caused a Los Angeles County Superior Court
15 judge to find that L. Ron Hubbard was a "pathological liar" and the Scientology Organization to be
16 "schizophrenic" and both to systematically violate the civil rights of members - agree that Scientology
17 could slander him for life? Would such a man sell his reputation for \$800,000? No, he would not sell his
18 reputation for any amount of dollars.

19 Armstrong also asks the court to listen to and consider his facts regarding Scientology's conduct
20 leading up to and after the agreement's execution. If the Court does so, and provides a fair hearing to Mr.
21 Armstrong, it will have no choice but to deny summary judgment.

22 **II. STATEMENT OF FACTS**

23 A. Fair Game Activities Against Armstrong Before December 6, 1986

24 Prior to the execution of the settlement agreement in later 1986, Gerald Armstrong had been the
25 subject of the unrelenting application of Scientology's fair game policy. (Sep.St. Defendant's Evidence ¶
26 1, A.) Such fair game actions included publishing "Suppressive Person Declares" on him, assaulting him,
27 spying on him, filing false charges with the Los Angeles County District Attorney and with the Federal
28 Bureau of Investigation, efforts to entrap him, illegal surveillance and videotaping, battery with a car

1 driven by a hired agent, attempting to involve Armstrong in a freeway accident, filing false declarations,
2 international publications falsely accusing him of crime (so-called "black propaganda"), filing false
3 contempt of court charges, and disseminating confidential statements by Armstrong in pastoral counseling
4 sessions. (*Ibid.*)

5 B. Fair Game Activities Against Armstrong's Attorney Before December 6, 1986

6 Prior to the execution of the settlement agreement in later 1986, Armstrong's lawyer, Michael
7 Flynn had been the subject of the unrelenting application of Scientology's fair game policy. (Sep.St.
8 Defendant's Evidence ¶ 1, B.) Such fair game actions included infiltrating Flynn's office, paying known
9 criminals to testify falsely against him, suing him, framing him with a forgery of a \$2,000,000 check, and
10 subjecting him to an international "black propaganda" campaign. (*Ibid.*)

11 C. Armstrong's Failure To Sign The Agreement Would Result In Further Fair Game

12 Flynn told Armstrong that if he didn't sign the agreement, Armstrong would continue to be targeted
13 for further fair game activities. (*Id.* at ¶ 1, C) Flynn also told Armstrong that the other fifteen people
14 involved in the "global settlement," of which the Armstrong agreement was a part, would continue to be
15 attacked by Scientology. (*Id.* at ¶ 1, D)

16 D. Scientology's Inducement For Armstrong's Execution Of The Agreement Was
17 Fraudulent Because It Never Intended To Abandon Its Practice Of Fair Game

18 Prior to Armstrong's signing of the agreement, attorney Flynn advised him that as part of the
19 agreement Scientology had promised to cease all of its fair game activities and attacks against Armstrong
20 and others. (*Id.* at ¶ 98) In consequence, paragraph 7-I of the settlement agreement states "... the "slate" is
21 wiped clean concerning past actions by any party." Paragraph 18-D states that the agreement is
22 confidential and the parties however may state the civil action was settled. Paragraph 18-D stated that the
23 parties agreed to forbear and refrain from doing any act or exercising any right which was inconsistent with
24 the agreement. (*Id.* at ¶ 99)

25 Scientology attorney Lawrence Heller, who is the representative of Scientology depicted on the
26 videotape of Armstrong's signing of the agreement, advised one court in 1989 in a motion to quash a
27 deposition subpoena served on Gerald Armstrong (that was based on the agreement) that he "was personally
28 involved in the [1986] settlement" and stated under oath "The non-disclosure obligations were a key part of

1 the settlement agreements insisted upon by all parties involved." (*Id.* at ¶ 101) He further stated,

2 "One of the key ingredients to completing these settlements, insisted upon by all parties involved,
3 was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences
4 with the Church of Scientology; (2) any knowledge possessed by the Scientology entities
5 concerning those staff members or parishioners."

6 (*Id.* at ¶ 102) When Heller spoke to Armstrong on November 20, 1989, Heller stated that Scientology had
7 obligations of non-disclosure as well as Armstrong. (*Id.* at ¶ 103)

8 Since Scientology signed the agreement, it did not cease all fair game attacks against him. (*Id.* at ¶
9 105) Said attacks included (1) delivering "dead agent" documents to various media representatives (*Id.* at ¶
10 ¶ 105, A); (2) publishing its own false descriptions of Armstrong's Scientology experiences (*Id.* at ¶ 105,
11 B); (3) disseminating to the media an edited, misleading and defamatory version of an illegal videotape
12 that Scientology agents had made of him (*Id.* at ¶ 105, C); (4) disseminating documents from the original
13 Armstrong litigation which Scientology had demanded be sealed (*Id.* at ¶ 105, D); (5) filing affidavits
14 about him in a lawsuit in England which falsely stated that Armstrong violated court orders and was an
15 admitted agent provocateur of the U.S. Government (*Id.* at ¶ 105, E); (6) threatening to sue Armstrong if
16 he even talked to attorneys in the English case where false statements were being made about him (*Id.* at ¶
17 105, F); (7) threatening to expose Armstrong's private writing if he failed to help prevent a litigant from
18 gaining access to the original Armstrong case file (*Id.* at ¶ 105, F); (8) threatening him with being sued if
19 he testified about Scientology pursuant to a subpoena (*Id.* at ¶ 105, G); and (9) threatening to sue
20 Armstrong for attending the public hearing on its motion to quash service of the deposition subpoena with
21 which he had been served. (*Id.* at ¶ 105, H.)

22 If Armstrong had known that the way the settlement agreement would have been interpreted and
23 enforced was that Scientology was free to attack him or anyone else, that it was going to continue fair
24 game as before the agreement's execution, and that he would be legally unable to respond to attacks on his
25 reputation or otherwise defend himself and others, he would have never signed the agreement for all the
26 money in the world. (*Id.* at ¶ 104)

27 The first action by Armstrong regarding Scientology's post-settlement fair game attacks on him was
28 to file petitions in the Court of Appeal requesting permission to participate in the then-pending appeal that
Scientology had taken from the 1984 decision in the *Armstrong* case, and the appeal that Scientology had

1 taken from the order unsealing the *Armstrong* court file. Over the objections of Scientology, the Court of
2 Appeal granted Armstrong's petitions (which on their face violated the provisions of 4-B of the
3 agreement), and unsealed the settlement agreement which Armstrong had attached as a "sealed exhibit" to
4 his petitions. (*Id.* at ¶ 106)

5 From the time that Armstrong petitioned the Court of Appeal, Scientology continued its fair game
6 attacks on him which included disseminating "dead agent packs" of "black propaganda" which provided
7 Scientology's false characterizations of Armstrong including that Armstrong (1) testified falsely at trial
8 (*Id.* at ¶ 107, A, a); (2) had "adopted a degraded lifestyle" (*Id.* at ¶ 107, A, b); (3) was "apparently naked":
9 in a newspaper photo (*Id.* at ¶ 107, A, c); (4) is connected to a "referral agency for those who engage in
10 the illegal activity of kidnapping adults" (*Id.* at ¶ 107, A, d); (5) defense at his 1984 trial "was a sham and
11 a fraud" (*Id.* at ¶ 107, A, e); (6) that the Los Angeles Police Department "authorized [Scientology's]
12 surreptitious videotapes of Armstrong (*Id.* at ¶ 107, A, f); (7) conspired to plant fabricated documents in
13 Scientology files and tell the internal Revenue Service to conduct a raid (*Id.* at ¶ 107, A, g); (8) wanted to
14 plunder Scientology for his own financial gain (*Id.* at ¶ 107, A, h); (9) never intended to adhere to the
15 terms of the settlement agreement (*Id.* at ¶ 107, A, i); (10) was motivated in writing attorney Lieberman
16 regarding the *Nothling* litigation by greed and power ((*Id.* at ¶ 107, A, j); (11) was incompetent as a
17 researcher on the Hubbard biography project (*Id.* at ¶ 107, A, k); (12) had perjured himself about
18 surrendering documents to the Court (*Id.* at ¶ 107, A, l); and (13) wanted to orchestrate a coup in which
19 members of the U.S. Government would wrest control of Scientology (*Id.* at ¶ 107, A, m).

20 In addition to the black propaganda seeking to "dead agent" Armstrong as set forth above, from the
21 time that Armstrong petitioned the Court of Appeal, Scientology continued its attacks on him which
22 included that he was formerly a heavy drug user, paid to provide homosexual sex, is psychotic and lives in
23 a world of delusion. (*Id.* at ¶ 107, C, a-d) Scientology used transcripts and other documents which it had
24 insisted be sealed in the original *Armstrong* litigation to attack him, (*Id.* at ¶ 107, B), and stating in the
25 media that Armstrong had posed naked in the newspaper (*Id.* at ¶ 107, D, E) One of its agents stated that
26 Armstrong has AIDS, and that he and his attorney Ford Greene have a "fuck buddy" relationship. (*Id.* at ¶
27 107, F, G) Scientology has filed declarations in various courts containing false charges about Armstrong,
28 and then using the settlement agreement to prevent or punish him from or for responding thereto. (*Id.* at ¶

1 107, H) It has attempted to have Armstrong jailed for contempt of court based on mischaracterizations of
2 his actions in conjunction with the manufacture of evidence. (*Id.* at ¶ 107, I) Scientology provided
3 documents to Premiere Magazine regarding Armstrong including partial transcripts of the illegal Ingram
4 videotaping of Armstrong and then using the settlement agreement to punish Armstrong for responding
5 thereto. (*Id.* at ¶ 107, J) Scientology has perpetrated fair game actions on Armstrong's friends and
6 associates including Ford Greene, Hana Whitfield, Dennis Erlich, Lawrence Wollersheim, Jonathan Atack,
7 Margery Wakefield, Nancy McLean and Malcolm Nothling. (*Id.* at ¶ 108)

8 E. Reasons Why The Settlement Agreement Cannot Be Specifically Enforced

9 Scientology's interpretation of the settlement agreement is that it can say whatever it wants about
10 Armstrong to anyone in any form, and that he has no right to respond thereto. (*Id.* at ¶ 109)
11 Armstrong has been subjected to Scientology's policy of fair game since 1982. (*Id.* at ¶ 110)
12 Armstrong's original cross-complaint against Scientology for fraud and years of fair game was set in
13 December 1986 for trial in March 1987. (*Id.* at ¶ 111) Scientology promised to pay money, cease fair
14 game against him and others, and execute a general release. Armstrong promised to dismiss his cross-
15 complaint and execute a general release. Neither side was to use information about the other in the future
16 so that there would be a "clean slate" between them. Armstrong never agreed and the agreement does not
17 state that Scientology may say or publish whatever it wants about Armstrong, and that he waived the right
18 to respond to such statements. (*Id.* at ¶ 112)

19 Mr. Flynn advised Armstrong that Scientology was paying Armstrong to dismiss his cross-
20 complaint and release it from liability for its acts prior to settlement. Armstrong never agreed to continue
21 to be fair game, a punching bag, willing victim, or a tool for Scientology's obstruction of justice. He
22 would never do so for any amount of money. (*Id.* at ¶ 116-117)

23 Although the agreement states that Armstrong waived his right to oppose Scientology's appeal of
24 Judge Breckenridge's 1984 decision, the Court of Appeal nonetheless allowed Armstrong to do so. (*Id.* at
25 ¶ 113-115) In addition, a trial judge has condemned the agreement as one-sided and fundamentally unfair.

26 "So my belief is Judge Breckenridge, being a very careful judge ... if he had been presented
27 with that whole agreement and if he had been asked to order its performance, he would have dug
28 his feet in because that is one ... I'll say one of the most ambiguous, one-sided agreements that I
have ever read. And I would have not ordered the enforcement of hardly any of the terms if I had
been asked to, even on the threat that okay, the case is not settled. [¶] I know we like to settle

1 cases. But we don't like to settle cases and, in effect, prostrate the court system into making an
2 order which is not fair or in the public interest."

3 (*Id.* at ¶ 120) By dint of contract, Scientology has prevented Armstrong's witnesses, including his former
4 attorneys - Michael J. Flynn, Bruce Bunch and Julia Dragojevic - from providing evidence to Armstrong in
5 the instant action. Were they not so constrained, they would provide evidence devastating to Scientology.

6 (*Id.* at ¶ 121-125)

7 F. Scientology's Hands Are Unclean

8 Based on Scientology's declaring Armstrong to be a suppressive person so as to subject him to its
9 fair game policy, Judge Breckenridge ruled that Scientology did not have "clean hands" as to Armstrong.

10 (*Id.* at ¶ 126) Judge Breckenridge's decision was affirmed in its totality by the Court of Appeal which
11 stated that the "declares" subjected Armstrong to the "Fair Game Doctrine" "which permits a suppressive
12 person to be 'tricked, sued, or lied to or destroyed ... [or] deprived of property or injured by any means by
13 any Scientologist." (*Id.* at ¶ 127) Following the Breckenridge decision Scientology continued to subject
14 Armstrong, and his attorney Michael J. Flynn, to fair game. (*Id.* at ¶ 128-129) Scientology promised to
15 discontinue fair game against Armstrong and others as an inducement for settlement, and continued fair
16 game against Armstrong since the settlement. (*Id.* at ¶ 130)

17 Prior to Armstrong speaking publicly about his experiences in Scientology, it engaged him in a
18 public controversy by publishing and disseminating its own versions of his experiences, and had continued
19 thereafter to publish and disseminate its versions of his experiences. (*Id.* at ¶ 131) Scientology claims by
20 the settlement that it is free to comment on Armstrong, but that Armstrong is prohibited from commenting
21 in response. (*Id.* at ¶ 132) Scientology characterizes Armstrong's statements, which it claims it is free to
22 comment on, as "often bizarre. allegations." (*Id.* at ¶ 133)

23 G. On Its Face, And As Applied, The Agreement Obstructs Justice

24 Scientology lawyer Lawrence Heller testified that "[a]t the time of the Armstrong settlement,
25 information from Mr. Armstrong was being used in a number of cases around the world." (*Id.* at ¶ 134)
26 Scientology staff member Kenneth Long stated in a declaration executed January 19, 1995, that prior to
27 December 1986, Armstrong had testified in 15 cases for a total of 28 trial days, and had executed 28
28 declarations in 15 cases all of which concerned Scientology and/or its related entities. Long characterizes

1 Armstrong as "an anti-Church litigant and a professional witness against the Church in other litigation" and
2 "a paralegal who worked extensively on anti-Church cases." (*Id.* at ¶ 136) In Armstrong's opinion "[t]he
3 whole set of 'settlement agreements,' which are commonly known as the 'Flynn agreement,' are unfair to
4 anyone who litigates either as a defendant or plaintiff against Scientology, since these agreements remove
5 knowledgeable witnesses from the legal arena and drive up litigation costs. The 'agreements' are also
6 unfair to the public because they allow Scientology's leaders to rewrite history, lie about judicially credited
7 information, attack the sources of that information without response, and convey the idea that it is futile to
8 speak the truth or oppose their tyranny." (*Id.* at ¶ 137)

9 H. Armstrong's experiences In Scientology Are Religious In Nature

10 Scientology holds itself out as a religion which identifies its scriptures as the writings and spoken
11 words of L. Ron Hubbard. (*Id.* at ¶ 140-141) The purpose of Scientology's religious orders is to carry out
12 the religious and administrative activities of Scientology. (*Id.* at ¶ 140-141.) From 1971 through 1981,
13 Armstrong was a member of Scientology's religious order, the Sea Organization, which is the period of
14 almost all of his significant experiences with Scientology. (*Id.* at ¶ 144) Armstrong believes that his
15 experiences in Scientology are religious, that God guided him to see that the faith he had put in L. Ron
16 Hubbard and Scientology was misplaced, that God kept him from being completely taken over by
17 Scientology's indoctrination, mind control, threats and punishments, and that God kept Armstrong's heart
18 from hardening despite the way that Scientology treated him. (*Id.* at ¶ 146) Armstrong also believes that
19 God led him into L. Ron Hubbard's archives and biography project in order to study Hubbard's secret
20 papers so as to document Hubbard's duplicity and to free Armstrong's faith from Scientology where it had
21 been misplaced. (*Ibid.*) Armstrong believes that God both protected Armstrong (*Id.* at ¶ 147) let him be
22 terrorized and set up by Scientology. (*Id.* at ¶ 148) Armstrong also believes that God brought him and his
23 attorney Michael Flynn together to fight the evil of Scientology. (*Id.* at ¶ 149) Armstrong believes that
24 God speaks to him, and in 1986 founded a church. (*Id.* at ¶ 150)

25 Armstrong believes that God allowed Scientology to harass, threaten and compromise Flynn, and
26 allowed Flynn to "lose heart" and have Armstrong agree to the instant settlement agreement. (*Id.* at ¶ 151-
27 152) Armstrong believes that God allowed Flynn to respond to Armstrong's objections about the
28 impossibility of the agreement and the liquidated damages clause by saying, "Gerry, it's not worth the

1 paper it's printed on. You can't contract away your Constitutional rights" and that Scientology was paying
2 Armstrong to dismiss his lawsuit. (*Id.* at ¶ 152) Armstrong believes that God kept him from responding to
3 Scientology's violations of the settlement agreement until he was served with a deposition subpoena at
4 which time Armstrong believes that God brought him to a determination to do what he could to bring to
5 light and correct injustice and evil. (*Id.* at ¶ 155)

6 **III. ARMSTRONG HAD NO FREEDOM OF CONSENT**

7 **A. Duress And Menace**

8 An essential element of a contract is consent. (*Civil Code* § 1550 (2).) An apparent consent is not
9 real or free when it has been obtained through duress or menace. (*Civil Code* § 1567 (1)(2).) Sections
10 1569 (1) and (3) of the *Civil Code* defines duress as the (1) "[u]nlawful confinement of the person of the
11 party, . . ." or (2) "[c]onfinement of such person, lawful in form, but fraudulently obtained, or fraudulently
12 made unjustly harassing or oppressive." The cases, however, have established much broader definitions,
13 and consequently, the language of the decisions can rarely be reconciled with the statutory language. For
14 example, in *Harlan v. Gladding, McBean & Co.* (1907) 7 Cal.App. 49, duress means a condition of mind
15 produced by improper external pressure or influence that practically destroys the free will of a person and
16 causes him to do an act or enter into a contract not of his own volition. In *Sistrom v. Anderson* (1942) 51
17 Cal.App.2d 213, duress is effectuated by an unlawful threat which overcomes the will of the person
18 threatened and induces him to do an act that he is not bound to do and would not otherwise have done.
19 *Steffen v. Refrigeration Discount Corp.* (1949) 91 Cal.App.2d 494, states that the test of duress, at its
20 harshest, is what would have influenced the conduct of a reasonable man. Indeed, the modern tendency is
21 to find duress wherever one, by the unlawful act of another, is induced to make a contract under
22 circumstances which deprive him of the exercise of free will. See *Keithley v. Civil Service Board* (1970)
23 11 Cal.App.3d 443; *Balling v. Finch* (1962) 203 Cal.App.2d 413; *Gross v. Needham* (1960) 184
24 Cal.App.2d 446; *Lewis v. Fahn* (1952) 113 Cal.App.2d 95; *Sistrom*, 51 Cal.App.2d at 213. Under this
25 standard, duress is to be tested, not by the nature of the threat, but by the state of mind induced in the
26 victim. *Balling*, 203 Cal.App.2d at 413; *Lewis*, 113 Cal.App.2d at 95.

27 Menace is defined as a threat of unlawful and violent injury to a party (*Civil Code* § 1570 (2)) or
28 injury to the character of such person. (*Civil Code* § 1570 (3).)

1 "Menace" means something different from "force." Thus, a mere verbal threat to have a mother
2 arrested and to take her children from her constitutes a "menace." [Citation.] The essential function
3 played by the concept of "menace" is to avoid or vitiate consent to an act, so that the act cannot be
said to constitute an exercise of free will. [Citation.] Thus, for example, mere persuasion, which,
in fact, convinces someone to do something, does not constitute coercion or menace. [Citation.]

4 (*People v. Cicero* (1984) 157 Cal.App.3d 465, 478) If a party exerts unlawful pressure on the injured party
5 in order to deprive him of contractual volition and induce him to act to his own detriment, consent thereto
6 is said to have been vitiated by menace. (*Goldstein v. Enoch* (1967) 248 Cal.App.2d 891, 894-895)

7 Ever since Armstrong left Scientology in 1981, Scientology, having declared him an enemy, a
8 "suppressive person," subjected him to certain actions, pursuant to its fair game policy, which constituted
9 duress and menace. (Sep.St. ¶ 1, A) Such acts included assaulting him, spying on him, filing false charges
10 with the Los Angeles County District Attorney and with the Federal Bureau of Investigation, efforts to
11 entrap him, illegal surveillance and videotaping, battery with a car driven by a hired agent, attempting to
12 involve Armstrong in a freeway accident, filing false declarations, international publications falsely
13 accusing him of crime (so-called "black propaganda"), filing false contempt of court charges, and
14 disseminating confidential statements by Armstrong in pastoral counseling sessions. (*Ibid.*)

15 Prior to the execution of the settlement agreement in later 1986, Armstrong's lawyer, Michael
16 Flynn had also been the subject of the unrelenting application of Scientology's fair game policy. (Sep.St.
17 Defendant's Evidence ¶ 1, B.) Such fair game actions included infiltrating Flynn's office, paying known
18 criminals to testify falsely against him, suing him, framing him with a forgery of a \$2,000,000 check, and
19 subjecting him to an international "black propaganda" campaign. (*Ibid.*)

20 Flynn told Armstrong that if he didn't sign the agreement, Armstrong would continue to be targeted
21 for further fair game activities. (*Id.* at ¶ 1, C) Flynn also told Armstrong that the other fifteen people
22 involved in the "global settlement," of which the Armstrong agreement was a part, would continue to be
23 attacked by Scientology. (*Id.* at ¶ 1, D)

24 Given Scientology's unrelenting attacks on Armstrong, his lawyer and all the "enemies" whom Mr.
25 Flynn represented, it is clear that Armstrong's consent to the agreement was obtained by duress and
26 menace, and therefore not free.

27 B. Fraud

28 The elements of actual fraud, whether in contract or in tort, have been stated as follows: There

1 must be (1) a false representation or concealment of a material fact (or, in some cases, an opinion)
2 susceptible of knowledge, (2) made with knowledge of its falsity or without sufficient knowledge on the
3 subject to warrant a representation, (3) with the intent to induce the person to whom it is made to act upon
4 it; and such person must (4) act in reliance upon the representation (5) to his damage. (*Harding v.*
5 *Robinson* (1917) 175 Cal. 534, 538; *Wolfe v. Severns* (1930) 109 Cal.App. 476, 485; 1 Witkin, *Summary*
6 *of California Law* § 393.)

7 The act constituting actual fraud may be concealment or "any other act fitted to deceive."
8 Specifically, "[t]he suppression of that which is true, by one having knowledge or belief of the fact" is
9 actual fraud. (*Civil Code* § 1572 (3); *Williamson & Vollmer Engineering v. Sequoia Ins. Co.* (1976) 64
10 Cal.App.3d 261, 273; 1 Witkin, *Summary of California Law*, § 398.) The Restatement points out that
11 concealment is an affirmative act, equivalent to a misrepresentation (comment a), and that it usually
12 consists either in actively hiding something from the other party, or preventing him making an
13 investigation that would have disclosed the true facts (Comment b).

14 The purpose of the catch-all statement, "any other act" is suggested in *Wells v. Zenz* (1927) 83
15 Cal.App. 137.

16 "Fraud is a generic term which embraces all the multifarious means which human ingenuity can
17 devise and are resorted to by one individual to get an advantage over another. No definite and
18 invariable rule can be laid down as a general proposition defining fraud, and it includes all surprise,
19 trick, cunning, dissembling, and unfair way by which another is deceived. The statutes of
20 California expressly provide that . . . any other act fitted to deceive is actual fraud."

21 In the instant case, Scientology represented to Armstrong that a primary reason for the settlement
22 was to provide it with an opportunity to cease its fair game activities against him and others. Since it is
23 clear that Scientology not only did not cease such activities, but never intended to do so, Armstrong's
24 consent to the agreement was vitiated. (*Civil Code* § 1565, 1567)

25 C. Even If The Contract Was Not Obtained By Duress, Menace, And Fraud, Scientology
26 Cannot Enforce The "Confidentiality" Provisions Because It Breached The Express And
27 Implied Covenant That It Would Say Nothing About Armstrong After The Settlement.

28 1. **Confidentiality Was Contractually Reciprocal** ¹

¹ Armstrong asks the Court to realize that this argument was never presented to Judge Sohigian when the parties litigated the preliminary injunction in May 1992.

1 Paragraph 7-I of the agreement states that the slate between Scientology and Armstrong is wiped
2 clean and that neither party shall use in the future any information obtained regarding the other that was the
3 subject of the settled litigation. (Sep.St. 99) The parties' intent in this regard was clearly articulated by
4 Scientology attorney Lawrence Heller almost three years later.

5 On or about November 1, 1989, in the case entitled *Corydon v. Church of Scientology*
6 *International, Inc., et al.*, LASC No. C694401, Scientology attorney Lawrence E. Heller filed a motion to
7 prevent Armstrong from testifying pursuant to subpoena. In his memorandum, Heller discussed the "block
8 settlement" of which the Armstrong agreement was a part. He stated:

9 One of the key ingredients to completing these settlements, insisted upon by all parties
10 involved, was strict confidentiality respecting: (1) the Scientology ... staff member's experiences
11 with ... Scientology; (2) **any knowledge possessed by the Scientology entities concerning those**
12 **staff members ...**; and (3) the terms and conditions of the settlements themselves. Peace has
reigned since the time the interested parties entered into the settlements, all parties having exercised
good faith in carrying out the terms of the settlement, including the obligations of confidentiality.
[Underlining is original emphasis.]

13 (Sep.St. 102: Ex. 1 (A)(D) at 4:9-19.) In his sworn supporting declaration, attorney Heller testified:

14 I was personally involved in the settlements which are referred to in these moving papers
15 which transpired some two and one-half years ago. Those settlements concerned well over a dozen
16 plaintiff litigants as well as various Church of Scientology entities . . . Settlement negotiations,
17 which were not supervised by any court, were arduous and, as is often the case in these instances,
18 sometimes contentious. However, a "universal settlement" was ultimately entered into between the
numerous parties. The universal settlement provided for non-disclosure of all facts underlying the
litigation as well as non-disclosure of the terms of the settlements themselves. The non-disclosure
obligations were a key part of the settlement agreements insisted upon by all parties involved.
[Original emphasis.]

19 (Sep.St. 101: Ex. 1 (A)(D) at 8:15-9:7.)

20 The principles concerning the interpretation of contracts are well settled. Paramount among these
21 rules are the following:

22 [T]he contract must be construed as a whole and the intention of the parties must be ascertained
23 from the consideration of the entire contract, not some isolated portion [citations]; a contract
24 entered into for the mutual benefit of the parties is to be interpreted so as to give effect to the main
25 purpose of the contract and not to defeat the mutual objectives of the parties [citations]; language
26 which is inconsistent with the objective of the contract shall be rejected [citations]. Also, where a
27 contract is susceptible of two interpretations, the courts shall give it such a construction as will
28 make it lawful, operative, definite, reasonable and capable of being carried into effect if it can be
done without violating the intention of the parties [citations]. And last, but not least, the court shall
avoid an interpretation which will make a contract extraordinary, harsh, unjust, inequitable or
which would result in absurdity [citations].

(*County of Marin v. Assessment App. Bd., Marin City* (1976) 64 Cal.App.3d 316, 325.)

1 That which is necessarily implied in the language of a contract is as much a part of it as that which
2 is expressed. (*Wal-Noon Corp. v. Hill* (1975) 45 Cal.App.3d 605, 611-12.) A contract includes not only
3 what is expressly stated, but also what is necessarily implied from the language used. (*Mercer v. Lemmens*
4 (1964) 230 Cal.App.2d 167, 171.) Where express covenants fail to cover phrases necessary to make
5 workable and meaningful the covenants expressed, implied covenants may be resorted to. (*Foley v. U.S.*
6 *Paving Co.* (1968) 262 Cal.App.2d 499, 505-06.) Stipulations which are necessary to make a contract
7 reasonable are implied in respect to matters as to which the contract manifests no contrary intention.
8 (*Straus v. North Hollywood Hospital* (1957) 150 Cal.App.2d 306, 309 P.2d 541, 545.) A fair and
9 reasonable interpretation of a contractual provision, rather than one leading to harsh, unreasonable or
10 inequitable results, is always preferred. (*Ibid.*) When the law implies a promise from the terms of a written
11 contract, the promise is as much a part of the contract as if it were written out. (*Amen v. Merced County*
12 *Title Co.* (1962) 58 Cal.2d 528, 532.) Unexpressed provisions of a contract may be inferred from the
13 writing or from external facts. (*California Lettuce Growers v. Union Sugar Co.* (1955) 45 Cal.2d 474, 289
14 P.2d 785, 790.) The rules controlling the exercise of judicial authority to insert implied covenants require
15 several concurrent conditions: (1) the implication must arise from the language used or it must be
16 indispensable to effectuate the intention of the parties; ² (2) it must appear from the language used that it
17 was so clearly within the contemplation of the parties that they deemed it unnecessary to express it; (3)
18 implied covenants can only be justified on the grounds of legal necessity; (4) a promise can be implied
19 only where it may be rightfully assumed that it would have been made if attention had been called to it;
20 and (5) there can be no implied covenant where the subject is completely covered by the contract. (*Adkins*
21 *v. Lear, Inc.* (1968) 67 Cal.2d 882, 905; *Addiego v. Hill* (1965) 238 Cal.App.2d 842, 847; *Walnut Creek*
22 *Pipe Distrib. v. Gates Rubber Co.* (1964) 228 Cal.App.2d 810, 815-16.)

23 Both the language of the agreement and the November 1989 declaration and memorandum of
24 Scientology attorney Heller illustrate that confidentiality was indispensable to effectuate the intentions of

25
26 ² One vital element in the construction of a contract is the intention of the parties in relation to its
27 execution. When determining this intention, the court may look to the circumstances surrounding the
28 making of the agreement, including the object, nature, and subject matter of the writing, and thereby place
itself for this purpose in the same situation in which the parties found themselves at the time of contracting.
(*Dunne & Gaston v. Keltner* (1975) 50 Cal.App.3d 560, 564.)

1 both Armstrong and Scientology. Indeed, a review of the agreement makes it clear that both parties
2 desired to terminate their disputatious interactions with one another and leave one another alone. There is
3 nothing in the agreement that states that Scientology could make whatever public statements it wanted to
4 about Armstrong, but that he would have to remain silent no matter what aspersions were cast his way. To
5 impose such a condition would make no sense because it would allow Scientology to slander Armstrong
6 and literally re-write history in order to suit its own ends without any regard to truth or accuracy.
7 Armstrong's history in the litigation before Judge Breckenridge illustrates a profound rejection of any such
8 result.³ Thus, under the circumstances there is a legal necessity for the Court to imply that the settlement
9 terms were reciprocal because it would be grossly unfair to Armstrong since it was never his intent to have
10 his own personal history revised according to the predilections of Scientology, and ultimately be jailed
11 after a Court issued injunctive relief based on the agreement that he could never respond thereto.

12 The agreement expressly states that Armstrong was not to discuss his knowledge or experience
13 with respect to Scientology. Although the agreement is silent whether Scientology was similarly
14 prohibited from discussing its knowledge of Armstrong, Mr. Heller was not. Therefore, to imply that the
15 parties' intention was for Scientology to be subject to the same confidentiality as was Armstrong does not
16 contravene any express term of the agreement and conforms with Mr. Heller's initial representations to the
17 judiciary regarding the intent of the agreement. To imply reciprocity would not violate the intent of the
18 parties. Indeed, not to imply such a term would violate the expectations of Armstrong and deny him the
19 fruits of his bargain. "If without the implied obligation the fruits of the contract would be denied to one of
20 the parties, the intent that such an obligation should not exist must clearly appear from the express terms of
21 the contract." (*Bergum v. Weber* (1955) 136 Cal.App.2d 389, 288 P.2d 623, 626.) Moreover, the "clean
22 slate" provision supports the conclusion that the confidentiality provisions were reciprocal, and rebuts the
23 conclusion that the parties intended that Scientology could say whatever it wanted about Armstrong, and
24 that it could sue him if he tried to respond.

25 **2. Scientology Breached The Implied Covenants of**
26 **Confidentiality And Of Good Faith And Fair Dealing**

27
28 ³ See generally, Ex. 1(A)(A), Memorandum of Intended Decision, *Church of Scientology of California v. Armstrong*, Los Angeles County Superior Court, Case No. C 420153.

1 In addition to the duties imposed upon the parties to a contract by the terms of their agreement, the
2 law implies in every contract a covenant of good faith and fair dealing. (*Seaman's Direct Buying Service,*
3 *Inc. v. Standard Oil Co.* (1984) 36 Cal.3d 752, 768.) The implied promise requires each contracting party
4 to refrain from doing anything to impair the right of the other to receive the benefits of the agreement.
5 (*Betts v. Allstate Ins. Co.* (1984) 154 Cal.App.3d 688, 705.) This covenant not only imposes upon each
6 contracting party the duty to refrain from doing anything which would render performance of the contract
7 impossible by any act of his own, but also the duty to do everything that the contract presupposes that he
8 will do to accomplish its purpose. (*McWilliams v. Holton* (1967) 248 Cal.App.2d 447, 451.) The precise
9 nature and extent of the duties imposed by such implied promise will depend upon the nature and purpose
10 of the underlying contract and the legitimate expectations of the parties. (*Tollefson v. Roman Catholic*
11 *Bishop* (1990) 219 Cal.App.3d 843, 854.) Thus, regardless of its origin, the covenant of good faith and fair
12 dealing is designed to effectuate the intentions and reasonable expectations of the parties reflected by
13 mutual promises within the contract. (*Ibid.*)

14 With respect to the agreement at bar, Scientology acted in bad faith by unfairly depriving
15 Armstrong of the benefit of the bargain of the settlement agreement. Rather than leave its history with
16 Armstrong to rest silently in the past insulated by mutual promises of confidentiality, Scientology
17 resurrected its old conflict with Armstrong when to do so suited whatever was its particular litigation or
18 public relations strategy of the moment. Such conduct violates the implied covenant of good faith and fair
19 dealing and excuses counter-performance by Armstrong.

20 **3. Due To Its Breaches, Scientology Cannot Enforce**
21 **Reciprocal Provisions Of The Agreement Against Armstrong**

22 A party complaining of a breach of contract is not entitled to recover therefor unless he has fulfilled
23 his obligations. He who seeks to enforce a contract must show that he has complied with the conditions
24 and agreements of the contract on his part to be performed. (*Pry Corporation of America v. Leach* (1960)
25 177 Cal.App.2d 632, 639.) A covenant is a promise to render some performance. A breach of covenant
26 excuses the other party's performance. (Witkin, *1 Summary of California Law* (1987) Contracts, § 723,
27 757.) Thus, one who himself breaches a contract cannot recover for a subsequent breach by the other
28 party, (*Silver v. Bank of America* (1941) 47 Cal.App.2d 639, 118 P.2d 891, 894), because a party to a

1 contract need not tender performance if the conduct of the other party amounts to a refusal to perform.
2 (*United California Bank v. Maltzman* (1975) 44 Cal.App.3d 41, 52.)

3 Scientology repeatedly breached its covenant to remain silent about Armstrong. (Sep.St. 105 (D-
4 H) Scientology cannot have it both ways.

5 D. Scientology Has Not Met Its Burden Which Would Entitle It To Injunctive Relief
6 Because It Is Not Entitled To The Equitable Remedy Of Specific Performance

7 As the basis for injunctive relief, Scientology relies upon the legal conclusion that the agreement
8 can be specifically enforced. (Moving Memorandum at p. 16:3-25.) Upon applying Civil Code section
9 3391 to the circumstances of this case, however, Armstrong cannot be compelled to specifically perform
10 the agreement. ⁴ An injunction cannot be granted to prevent the breach of a contract, the performance of
11 which would not be specifically enforced. (*Thayer Plymouth Center, Inc. v. Chrysler Motors Corp.* (1967)
12 255 Cal.App.2d 300, 304, 63 Cal.Rptr. 148.)

13 It is rote that "equity will not lend its aid to enforce contracts which upon their face are so
14 manifestly harsh and oppressive as to shock the conscience; it must be affirmatively shown that such
15 contracts are fair and just." (*Jacklich v. Baer* (1943) 57 Cal.App.2d 684, 135 P.2d 179, 183.) The rationale
16 for this rule is grounded in a common sense recognition of the rules of fair play, not fair game.

17 It is said . . . that the doctrine that he who seeks equity must do equity means that the party asking
18 the aid of the court must stand in a conscientious relation to his adversary; that the transaction from
19 which his claim arises must be fair and just and that the relief itself must not be harsh and
20 oppressive upon the defendant. And that specific performance will always be refused when a
contract itself is unfair, one-sided, unconscionable, or affected by any other such inequitable
feature, and when specific performance would be oppressive upon the defendant, or would prevent
the enjoyment of his own rights, or would in any other manner work injustice.

21 (*Id.*, 135 P.2d at 184; *Chriddenden v. Hansen* (1943) 59 Cal.App.2d 56, 138 P.2d 37, 38.)

22
23 ⁴In full, Civil Code section 3391 states:

24 "WHAT PARTIES CANNOT BE COMPELLED TO PERFORM. Specific performance
cannot be enforced against a party to a contract in any of the following cases:

- 25 1. If he has not received an adequate consideration for the contract;
- 26 2. If it is not, as to him, just and reasonable;
- 27 3. If his assent was obtained by the misrepresentation, concealment, circumvention, or unfair
practices of any party to whom performance would become due under the contract, or by any
promise of such party which has not been substantially fulfilled; or
- 28 4. If his assent was given under the influence of mistake, misapprehension, or surprise, except
that where the contract provides for compensation in the case of mistake, a mistake within the scope
of such provision may be compensated for, and the contract specifically enforced in other respects,
if proper to be so enforced."

1 The burden is on the plaintiff to plead and prove "that the contract is not inequitable or
2 unconscionable" in order to support a decree of specific performance. (*Quan v. Kraseman* (1948) 84
3 Cal.App.2d 550, 191 P.2d 16, 17.)

4 The primary issue with respect to fairness is whether it is fair for the Court to support
5 Scientology's position that it purchased Armstrong's First Amendment Right to Free Speech with respect to
6 activities (concerning which Scientology would otherwise assert falls within its First Amendment Right to
7 Free Exercise of Religion because it involves the time Armstrong was a practicing Scientologist) which for
8 Armstrong constitutes an unquestionably religious experience twelve years in duration, for \$800,000. That
9 is an undeniably large sum of money. Scientology, however, did not purchase Armstrong's silence without
10 also giving up its right to talk about him. When determining what Scientology's money bought, the
11 court must consider the overall context of the litigation and the relations of the parties in December 1986.
12 In June 1984, Judge Breckenridge had severely condemned Scientology when holding for defendant
13 Armstrong in the original litigation.⁵ Armstrong's cross-complaint seeking compensation for
14 Scientology's fair game actions against him involved serious charges of heinous misconduct was set for
15 trial in early 1987. In July 1986 a Los Angeles County Superior Court jury had awarded Lawrence
16 Wollersheim \$5,000,000 in compensatory damages and \$25,000,000 in punitive damages against
17 Scientology. Mr. Heller confirmed that the intention of the parties in the settlement was not only that
18 Armstrong not to talk about Scientology, but also that Scientology would not talk about him. In light of
19 these facts, the issue no longer is as clear cut as Scientology presents: it bought Armstrong's First
20 Amendment Free Speech Rights for \$800,000. Indeed, it appears that Scientology bought a dismissal of a
21 potentially explosive cross-complaint and agreed to bury the hatchet.

22 Scientology does not make a single allegation that Armstrong broke his covenant of silence prior to
23 1991. The record is replete, however, with Scientology's breaches of its obligation to maintain silence as
24 to Armstrong. It would be fundamentally unreasonable and unfair, in light of all the facts, for a Court to
25 allow Scientology to say whatever it wants about Armstrong, and to require Armstrong to remain mute in
26

27 ⁵ Judge Breckenridge also stated that "Defendant and his counsel are free to speak or communicate
28 upon any of Defendant Armstrong's recollections of his life as a Scientologist or the contents of any exhibit
received in evidence or marked for identification ..." (Ex. 1 (A)(A) at 3:3-6)

1 the face of such attacks. Since Scientology has not done equity under the terms of the agreement as
2 interpreted by its lead settlement counsel, he cannot ask this Court to enjoin Armstrong from speaking
3 about it.

4 E. The Agreement Obstructs Justice

5 In addition to the arguments which relate to the unenforceability of the agreement, it is also void
6 against public policy. What Scientology is seeking to do is to remove Armstrong, and all others like him,
7 from playing any role in the truth seeking process, whether such process be in competition found in the
8 public marketplace of ideas, or in the truth-seeking forum provided by the judiciary. Thus, by eliminating
9 those who are knowledgeable of its history and practices, Scientology seeks, quite literally, to shape public
10 opinion and skew judicial decision-making by writing its own script. Thus, with no regard for the truth,
11 Scientology may rest secure in the knowledge that it has purchased the silence of witnesses adverse to it
12 and the Courts will enforce it.

13 The consideration of a contract must be lawful. (*Civil Code* § 1607.) If any part of the
14 consideration is unlawful the entire contract is void. (*Civil Code* § 1608.) Consideration is unlawful if it is
15 contrary to an express provision of law, contrary to the policy of express law, though not expressly
16 prohibited, or otherwise contrary to good morals. (*Civil Code* § 1667.) The object of the contract is the
17 thing which it is agreed, on the party receiving the consideration, to do or not to do. (*Civil Code* § 1595.)
18 The object must be lawful when the contract is made. (*Civil Code* § 1596.) Whether or not a contract in a
19 given case is contrary to public policy is a question of law to be determined from the circumstances of each
20 particular case. (*Bovard v. American Horse Enterprises* (1988) 201 Cal.App.3d 832, 838; *Kallen v. Delug*
21 (1984) 157 Cal.App.3d 940, 951; *Russell v. Soldinger* (1976) 59 Cal.App.3d 633, 642.) It is a
22 fundamental rule of construction of contracts that all applicable laws in existence when an agreement is
23 made, which laws the parties are presumed to know and have in mind, necessarily enter into the contract
24 and form a part of it without any stipulation to that effect, as if they were expressly referred to and
25 incorporated in the agreement. (*People v. Hadley* (1967) 257 Cal.App.2d Supp. 871, 881.) "Agreements
26 to suppress evidence have long been held void as against public policy, both in California and in most
27 common law jurisdictions." (*Williamson v. Superior Court* (1978) 21 Cal.3d 829, 836-37.) In *Brown v.*
28 *Freese* (1938) 28 Cal.App.2d 608, the California Court of Appeal adopted section 557 of the Restatement

1 of the Law of Contracts prohibiting as illegal those agreements which sought to suppress the disclosure of
2 discreditable facts. The court stated:

3 A bargain that has for its consideration the nondisclosure of discreditable facts . . . is illegal. . . .
4 In many cases falling within the rule stated in the section the bargain is illegal whether or not the
5 threats go so far as to bring the case within the definition of duress. In some cases, moreover,
6 disclosure may be proper or even a duty, and the offer to pay for nondisclosure may be voluntarily
7 made. Nevertheless the bargain is illegal. Moreover, even **though the offer to pay for
nondisclosure is voluntarily made and though there is not duty to make disclosure or
propriety in doing so, a bargain to pay for nondisclosure is illegal.** [Emphasis added.]

8 (*Brown* 28 Cal.App.2d at 618.) *Civil Code* § 1668 states:

9 All contracts which have for their object, directly or indirectly, to exempt anyone from
10 responsibility for his own fraud, or willful injury to the person or property of another, or
11 violation of law, whether willful or negligent, are against the policy of the law.

12 Since an agreement to suppress evidence or to conceal a witness is illegal, (Witkin, § 611 at 550.
13 *Penal Code* §§ 136, 136.1, and 138; *Mary R. v. B. & R. Corp.* (1983) 149 Cal.App.3d 308, 196 Cal.Rptr.
14 871; *Tappan v. Albany Brewing Co.* (1889) 80 Cal. 570, 571-572), and the combined effect of the "global
15 settlement" has been to remove the availability as witnesses of most former high-ranking Scientologists,
16 such can "lead to subtle but deliberate attempts to suppress relevant evidence." (*Williamson*, 21 Cal.3d at
17 838.)

18 Thus, where a contract is made either (1) to achieve an illegal purpose, or (2) by means of
19 consideration that is not legal, the contract itself is void. Witkin, *Summary of California Law* (9th Ed.
20 1987) Vol. 1, Contracts, § 441 at 396.

21 Illegal contracts are matters which implicate public policy. Public policy has purposefully been a
22 "vague expression . . . [that] has been left loose and free of definition in the same manner as
23 fraud."(*Safeway Stores v. Hotel Clerks Intn'l Ass.* (1953) 41 Cal.2d 567, 575) Public policy means
24 "anything which tends to undermine that sense of security for individual rights, whether of personal liberty
25 or private property, which any citizen ought to feel is against public policy." (*Ibid.*) Therefore, "[a]
26 contract made contrary to public policy may not serve as the foundation of any action, either in law or in
27 equity, [Citation] and the parties will be left where they are found when they come to court for relief.
28 [Citation.]" (*Tiedje v. Aluminum Paper Milling Co.* (1956) 46 Cal.2d 450, 454)

Based on Judge Breckenridge's decision alone, it is clear what Scientology seeks to suppress. The
judiciary should not be used for such a purpose.

1 F. The First Amendment Precludes Enforcement Of The Agreement

2 Judge Breckenridge found Armstrong to possess a "dedication to the truth" (Ex. 1 (A)(A) at 5:9),
3 and to be "credible [and] extremely persuasive." (*Id.* at 7:9-12) He found that "the Church or its minions
4 is fully capable of intimidation or other physical or psychological abuse if it suits their ends." (*Id.* at 8:3-5)
5 Armstrong communicates with God and God has guided Armstrong to continue his devotion to the truth at
6 whatever cost. Armstrong believes that his entire relationship with Scientology over the past 25 years to
7 have been divinely inspired, and that God has called upon Armstrong to speak out and tell the truth about
8 Scientology in order to protect people from fair game. (Sep.St. 139-174) Scientology, a religion, is asking
9 the Court to use its power to censor Armstrong's speech regarding his experiences while he was a member
10 of the Scientology religion, concerning which Armstrong says he was misled into believing and concerning
11 which error he says God enlightened him. ⁶ Since fair game is a sectarian scripture of the Scientology
12 religion which includes deception and character assassination as preferred methods of conduct, for the Court
13 to enforce the agreement and silence Armstrong is to prefer Scientology's malevolent sectarianism over
14 Armstrong's right to religiously based speech. It must be remembered that Armstrong has done nothing
15 more than speak. To enforce the agreement not only would violate Armstrong's First Amendment right to
16 Free Speech and Free Exercise, it would also violate the anti-establishment clause.

17 The First Amendment guarantees of freedom of religion establish liberty of conscience as an
18 abiding national principle. The realm of individual belief is wholly beyond the power of the state;
19 "[h]eresy trials are foreign to our Constitution." (*United States v. Ballard* (1944) 322 U.S. 78, 86) But
20 constitutional protection is not limited to matters of belief. Guaranteeing the "the free exercise" of
21

22 ⁶ Armstrong has made a number of religiously-based claims which appear on their face to be
23 incredible, the foremost of which is that God told him, in answer to his prayers, to give away all his
24 worldly wealth, which he did. Such beliefs and conduct, however difficult to accept, should not result in
25 the contamination of the Court's attitude toward Armstrong. As stated by our country's highest court, "The
26 religious views espoused by [Armstrong] might seem incredible, if not preposterous, to most people. But if
27 those doctrines are subject to a trial before a jury charged with finding their truth or falsity, then the same
28 can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a
forbidden domain. The First Amendment does not select any one group or any one type of religion for
preferred treatment. It puts them all in that position. [Citation.] 'With man's relations to his Maker and the
obligations he may think they impose, and the manner in which an expression shall be made by him of his
belief on those subjects, no interference can be permitted, provided always the laws of society, designed to
secure its peace and prosperity, and the morals of its people, are not interfered with.'" (*United States v.*
Ballard (1943) 322 U.S. 78, 87)

1 religions, the words of the Constitution's text also shields conduct undertaken for reasons of faith. "[T]he
2 right to the free exercise of religion unquestionably encompasses the right to preach, proselyte, and
3 perform other similar religious functions." (*McDaniel v. Paty* (1978) 435 U.S. 618, 626 (Burger, C.J.)
4 (plurality opinion), See also *Wisconsin v. Yoder* (1972) 406 U.S. 205, 220 ["there are areas of conduct
5 protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to
6 control, even under regulations of general applicability"]).

7 The Establishment Clause, providing that the state "shall make no law respecting an establishment
8 of religion ...," (First Amendment to the U.S. Constitution) was a product of religion intolerance
9 experienced by our forebears both in Europe and in the New World. Those who came into conflict with
10 the dominant, government-endorsed religions suffered fines, imprisonment and even death. (*Everson v.*
11 *Board of Education* (1947) 330 U.S. 1, 9) In reaction to this religious intolerance, the framers of the
12 Constitution concluded that individual religious liberty could be achieved best under a government which
13 was stripped of all power to tax, support or otherwise assist any or all religions, or to interfere with the
14 beliefs of any religion or group. (*Id.* 330 U.S. at 11) The Establishment Clause is far more than a mere
15 prohibition upon the formal establishment of a state church:

16 The "establishment of religion" clause of the First Amendment means at least this: Neither
17 a state nor a federal government can set up a church. Neither can pass laws which aid one
18 religion, aid all religions, or prefer one religion over another. Neither can force nor
19 influence a person to go to or remain away from church against his will or force him to
20 profess a belief or disbelief in any religion. No person can be punished for entertaining or
21 professing religious beliefs or disbeliefs, for church attendance or non-attendance.

22 (330 U.S. at 15-16) Thus, the First Amendment's "anti-establishment clause" (*Wollersheim v. Church of*
23 *Scientology* (1989) 212 Cal.App.3d 872, 884) guarantees citizens that the government will not use its
24 resources to impose religion on us. (*Ibid.*) Since "dead agenting" Armstrong by means of "black
25 propaganda" is an application of fair game, as is the use of the law to destroy critics, what is at issue
26 here is Scientology's sectarian doctrine and practice to neutralize "suppressive person" defendant
27 Armstrong. Since this strategy is being exercised by means of judicial force, the Court is preferring the
28 Scientological approach to Truth over the approach employed by Armstrong. Such is not only
unconstitutional, it is wrong.

IV. CONCLUSION

1 Based on the foregoing, Defendant Gerald Armstrong respectfully requests that the motion for
2 summary adjudication should be denied.

3
4 DATED: September 18, 1995

HUB LAW OFFICES

5
6
7 By: 

FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

DEFENDANT'S OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION ON TWENTIETH CAUSE OF ACTION; ARMSTRONG'S SEPARATE STATEMENT OF DISPUTED AND UNDISPUTED FACTS IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION OF THE TWENTIETH CAUSE OF ACTION ON THE SECOND AMENDED COMPLAINT; DEFENDANT'S EVIDENCE IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION ON TWENTIETH CAUSE OF ACTION

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo,

California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

BY HAND

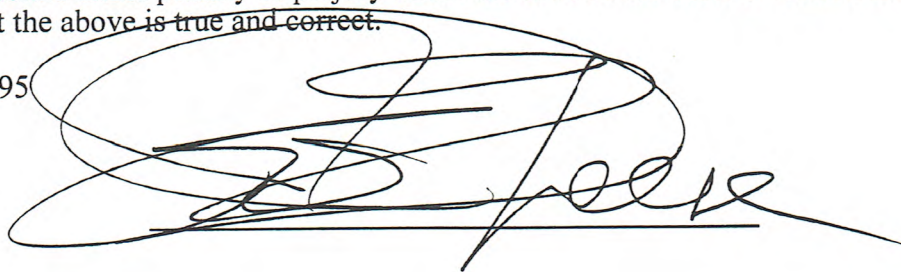
LAURIE J. BARTILSON,ESQ.
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028

(Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee.

(By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: September 18, 1995



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Attorney for Defendant
GERALD ARMSTRONG

(SPACE BELOW PROVIDED FOR FILING STAMP ONLY)

FILED

SEP 18 1995

HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN**

CHURCH OF SCIENTOLOGY INTERNATIONAL,))
a California not-for-profit religious corporation,))

Plaintiff,))

vs.))

GERALD ARMSTRONG; MICHAEL WALTON;))
THE GERALD ARMSTRONG CORPORATION,))
a California for-profit))
corporation; DOES 1 through 100,))
inclusive,))

Defendants.))

No. 157 680

DEFENDANT'S OPPOSITION TO
MOTION FOR SUMMARY
ADJUDICATION ON THE TWENTIETH
CAUSE OF ACTION

Date: September 29, 1995
Time: 9:00 a.m.
Dept: One (1)
Trial Date: None Set

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1 **I. INTRODUCTION**

2 While the religious beliefs of Gerald Armstrong may seem ludicrous and incredible to some, his
3 right to maintain those beliefs is the subject of one of the Constitution's most dear protections, freedom of
4 religion. At first blush it is difficult to overcome the inferences which arise from the fact that Armstrong
5 received \$800,000 from Scientology to keep his mouth shut, but that is not what Scientology paid him to
6 do. It paid him to dismiss his cross-complaint and mutually agreed to maintain confidentiality as to him in
7 consideration for his reciprocal promise. When Scientology breached this promise, Armstrong was free to
8 speak about it.

9 Armstrong asks the Court to not continue to be misled by Scientology's long list of Armstrong's
10 actions which it claims to violate the agreement. Indeed, such would have violated the agreement had
11 Scientology not induced Armstrong to enter it based on the fraudulent representations that it wanted a
12 chance to forsake its practice of fair game, both as to the world in general and Armstrong in particular. Of
13 course, continuing to engage in such conduct invalidates the agreement Scientology would have this Court
14 enforce. After all, why would the man - whose defense caused a Los Angeles County Superior Court
15 judge to find that L. Ron Hubbard was a "pathological liar" and the Scientology Organization to be
16 "schizophrenic" and both to systematically violate the civil rights of members - agree that Scientology
17 could slander him for life? Would such a man sell his reputation for \$800,000? No, he would not sell his
18 reputation for any amount of dollars.

19 Armstrong also asks the court to listen to and consider his facts regarding Scientology's conduct
20 leading up to and after the agreement's execution. If the Court does so, and provides a fair hearing to Mr.
21 Armstrong, it will have no choice but to deny summary judgment.

22 **II. STATEMENT OF FACTS**

23 A. Fair Game Activities Against Armstrong Before December 6, 1986

24 Prior to the execution of the settlement agreement in later 1986, Gerald Armstrong had been the
25 subject of the unrelenting application of Scientology's fair game policy. (Sep.St. Defendant's Evidence ¶
26 1, A.) Such fair game actions included publishing "Suppressive Person Declares" on him, assaulting him,
27 spying on him, filing false charges with the Los Angeles County District Attorney and with the Federal
28 Bureau of Investigation, efforts to entrap him, illegal surveillance and videotaping, battery with a car

1 driven by a hired agent, attempting to involve Armstrong in a freeway accident, filing false declarations,
2 international publications falsely accusing him of crime (so-called "black propaganda"), filing false
3 contempt of court charges, and disseminating confidential statements by Armstrong in pastoral counseling
4 sessions. (*Ibid.*)

5 B. Fair Game Activities Against Armstrong's Attorney Before December 6, 1986

6 Prior to the execution of the settlement agreement in later 1986, Armstrong's lawyer, Michael
7 Flynn had been the subject of the unrelenting application of Scientology's fair game policy. (Sep.St.
8 Defendant's Evidence ¶ 1, B.) Such fair game actions included infiltrating Flynn's office, paying known
9 criminals to testify falsely against him, suing him, framing him with a forgery of a \$2,000,000 check, and
10 subjecting him to an international "black propaganda" campaign. (*Ibid.*)

11 C. Armstrong's Failure To Sign The Agreement Would Result In Further Fair Game

12 Flynn told Armstrong that if he didn't sign the agreement, Armstrong would continue to be targeted
13 for further fair game activities. (*Id.* at ¶ 1, C) Flynn also told Armstrong that the other fifteen people
14 involved in the "global settlement," of which the Armstrong agreement was a part, would continue to be
15 attacked by Scientology. (*Id.* at ¶ 1, D)

16 D. Scientology's Inducement For Armstrong's Execution Of The Agreement Was
17 Fraudulent Because It Never Intended To Abandon Its Practice Of Fair Game

18 Prior to Armstrong's signing of the agreement, attorney Flynn advised him that as part of the
19 agreement Scientology had promised to cease all of its fair game activities and attacks against Armstrong
20 and others. (*Id.* at ¶ 98) In consequence, paragraph 7-I of the settlement agreement states "... the "slate" is
21 wiped clean concerning past actions by any party." Paragraph 18-D states that the agreement is
22 confidential and the parties however may state the civil action was settled. Paragraph 18-D stated that the
23 parties agreed to forbear and refrain from doing any act or exercising any right which was inconsistent with
24 the agreement. (*Id.* at ¶ 99)

25 Scientology attorney Lawrence Heller, who is the representative of Scientology depicted on the
26 videotape of Armstrong's signing of the agreement, advised one court in 1989 in a motion to quash a
27 deposition subpoena served on Gerald Armstrong (that was based on the agreement) that he "was personally
28 involved in the [1986] settlement" and stated under oath "The non-disclosure obligations were a key part of

1 the settlement agreements insisted upon by all parties involved." (*Id.* at ¶ 101) He further stated,

2 "One of the key ingredients to completing these settlements, insisted upon by all parties involved,
3 was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences
4 with the Church of Scientology; (2) any knowledge possessed by the Scientology entities
5 concerning those staff members or parishioners."

6 (*Id.* at ¶ 102) When Heller spoke to Armstrong on November 20, 1989, Heller stated that Scientology had
7 obligations of non-disclosure as well as Armstrong. (*Id.* at ¶ 103)

8 Since Scientology signed the agreement, it did not cease all fair game attacks against him. (*Id.* at ¶
9 105) Said attacks included (1) delivering "dead agent" documents to various media representatives (*Id.* at ¶
10 ¶ 105, A); (2) publishing its own false descriptions of Armstrong's Scientology experiences (*Id.* at ¶ 105,
11 B); (3) disseminating to the media an edited, misleading and defamatory version of an illegal videotape
12 that Scientology agents had made of him (*Id.* at ¶ 105, C); (4) disseminating documents from the original
13 Armstrong litigation which Scientology had demanded be sealed (*Id.* at ¶ 105, D); (5) filing affidavits
14 about him in a lawsuit in England which falsely stated that Armstrong violated court orders and was an
15 admitted agent provocateur of the U.S. Government (*Id.* at ¶ 105, E); (6) threatening to sue Armstrong if
16 he even talked to attorneys in the English case where false statements were being made about him (*Id.* at ¶
17 105, F); (7) threatening to expose Armstrong's private writing if he failed to help prevent a litigant from
18 gaining access to the original Armstrong case file (*Id.* at ¶ 105, F); (8) threatening him with being sued if
19 he testified about Scientology pursuant to a subpoena (*Id.* at ¶ 105, G); and (9) threatening to sue
20 Armstrong for attending the public hearing on its motion to quash service of the deposition subpoena with
21 which he had been served. (*Id.* at ¶ 105, H.)

22 If Armstrong had known that the way the settlement agreement would have been interpreted and
23 enforced was that Scientology was free to attack him or anyone else, that it was going to continue fair
24 game as before the agreement's execution, and that he would be legally unable to respond to attacks on his
25 reputation or otherwise defend himself and others, he would have never signed the agreement for all the
26 money in the world. (*Id.* at ¶ 104)

27 The first action by Armstrong regarding Scientology's post-settlement fair game attacks on him was
28 to file petitions in the Court of Appeal requesting permission to participate in the then-pending appeal that
Scientology had taken from the 1984 decision in the *Armstrong* case, and the appeal that Scientology had

1 taken from the order unsealing the *Armstrong* court file. Over the objections of Scientology, the Court of
2 Appeal granted Armstrong's petitions (which on their face violated the provisions of 4-B of the
3 agreement), and unsealed the settlement agreement which Armstrong had attached as a "sealed exhibit" to
4 his petitions. (*Id.* at ¶ 106)

5 From the time that Armstrong petitioned the Court of Appeal, Scientology continued its fair game
6 attacks on him which included disseminating "dead agent packs" of "black propaganda" which provided
7 Scientology's false characterizations of Armstrong including that Armstrong (1) testified falsely at trial
8 (*Id.* at ¶ 107, A, a); (2) had "adopted a degraded lifestyle" (*Id.* at ¶ 107, A, b); (3) was "apparently naked":
9 in a newspaper photo (*Id.* at ¶ 107, A, c); (4) is connected to a "referral agency for those who engage in
10 the illegal activity of kidnapping adults" (*Id.* at ¶ 107, A, d); (5) defense at his 1984 trial "was a sham and
11 a fraud" (*Id.* at ¶ 107, A, e); (6) that the Los Angeles Police Department "authorized [Scientology's]
12 surreptitious videotapes of Armstrong (*Id.* at ¶ 107, A, f); (7) conspired to plant fabricated documents in
13 Scientology files and tell the internal Revenue Service to conduct a raid (*Id.* at ¶ 107, A, g); (8) wanted to
14 plunder Scientology for his own financial gain (*Id.* at ¶ 107, A, h); (9) never intended to adhere to the
15 terms of the settlement agreement (*Id.* at ¶ 107, A, i); (10) was motivated in writing attorney Lieberman
16 regarding the *Nothling* litigation by greed and power ((*Id.* at ¶ 107, A, j); (11) was incompetent as a
17 researcher on the Hubbard biography project (*Id.* at ¶ 107, A, k); (12) had perjured himself about
18 surrendering documents to the Court (*Id.* at ¶ 107, A, l); and (13) wanted to orchestrate a coup in which
19 members of the U.S. Government would wrest control of Scientology (*Id.* at ¶ 107, A, m).

20 In addition to the black propaganda seeking to "dead agent" Armstrong as set forth above, from the
21 time that Armstrong petitioned the Court of Appeal, Scientology continued its attacks on him which
22 included that he was formerly a heavy drug user, paid to provide homosexual sex, is psychotic and lives in
23 a world of delusion. (*Id.* at ¶ 107, C, a-d) Scientology used transcripts and other documents which it had
24 insisted be sealed in the original *Armstrong* litigation to attack him, (*Id.* at ¶ 107, B), and stating in the
25 media that Armstrong had posed naked in the newspaper (*Id.* at ¶ 107, D, E) One of its agents stated that
26 Armstrong has AIDS, and that he and his attorney Ford Greene have a "fuck buddy" relationship. (*Id.* at ¶
27 107, F, G) Scientology has filed declarations in various courts containing false charges about Armstrong,
28 and then using the settlement agreement to prevent or punish him from or for responding thereto. (*Id.* at ¶

1 107, H) It has attempted to have Armstrong jailed for contempt of court based on mischaracterizations of
2 his actions in conjunction with the manufacture of evidence. (*Id.* at ¶ 107, I) Scientology provided
3 documents to Premiere Magazine regarding Armstrong including partial transcripts of the illegal Ingram
4 videotaping of Armstrong and then using the settlement agreement to punish Armstrong for responding
5 thereto. (*Id.* at ¶ 107, J) Scientology has perpetrated fair game actions on Armstrong's friends and
6 associates including Ford Greene, Hana Whitfield, Dennis Erlich, Lawrence Wollersheim, Jonathan Attack,
7 Margery Wakefield, Nancy McLean and Malcolm Nothling. (*Id.* at ¶ 108)

8 E. Reasons Why The Settlement Agreement Cannot Be Specifically Enforced

9 Scientology's interpretation of the settlement agreement is that it can say whatever it wants about
10 Armstrong to anyone in any form, and that he has no right to respond thereto. (*Id.* at ¶ 109)
11 Armstrong has been subjected to Scientology's policy of fair game since 1982. (*Id.* at ¶ 110)
12 Armstrong's original cross-complaint against Scientology for fraud and years of fair game was set in
13 December 1986 for trial in March 1987. (*Id.* at ¶ 111) Scientology promised to pay money, cease fair
14 game against him and others, and execute a general release. Armstrong promised to dismiss his cross-
15 complaint and execute a general release. Neither side was to use information about the other in the future
16 so that there would be a "clean slate" between them. Armstrong never agreed and the agreement does not
17 state that Scientology may say or publish whatever it wants about Armstrong, and that he waived the right
18 to respond to such statements. (*Id.* at ¶ 112)

19 Mr. Flynn advised Armstrong that Scientology was paying Armstrong to dismiss his cross-
20 complaint and release it from liability for its acts prior to settlement. Armstrong never agreed to continue
21 to be fair game, a punching bag, willing victim, or a tool for Scientology's obstruction of justice. He
22 would never do so for any amount of money. (*Id.* at ¶ 116-117)

23 Although the agreement states that Armstrong waived his right to oppose Scientology's appeal of
24 Judge Breckenridge's 1984 decision, the Court of Appeal nonetheless allowed Armstrong to so do. (*Id.* at
25 ¶ 113-115) In addition, a trial judge has condemned the agreement as one-sided and fundamentally unfair.

26 "So my belief is Judge Breckenridge, being a very careful judge ... if he had been presented
27 with that whole agreement and if he had been asked to order its performance, he would have dug
28 his feet in because that is one ... I'll say one of the most ambiguous, one-sided agreements that I
have ever read. And I would have not ordered the enforcement of hardly any of the terms if I had
been asked to, even on the threat that okay, the case is not settled. [¶] I know we like to settle

1 cases. But we don't like to settle cases and, in effect, prostrate the court system into making an
2 order which is not fair or in the public interest."

3 (*Id.* at ¶ 120) By dint of contract, Scientology has prevented Armstrong's witnesses, including his former
4 attorneys - Michael J. Flynn, Bruce Bunch and Julia Dragojevic - from providing evidence to Armstrong in
5 the instant action. Were they not so constrained, they would provide evidence devastating to Scientology.

6 (*Id.* at ¶ 121-125)

7 F. Scientology's Hands Are Unclean

8 Based on Scientology's declaring Armstrong to be a suppressive person so as to subject him to its
9 fair game policy, Judge Breckenridge ruled that Scientology did not have "clean hands" as to Armstrong.

10 (*Id.* at ¶ 126) Judge Breckenridge's decision was affirmed in its totality by the Court of Appeal which
11 stated that the "declares" subjected Armstrong to the "Fair Game Doctrine" "which permits a suppressive
12 person to be 'tricked, sued, or lied to or destroyed ... [or] deprived of property or injured by any means by
13 any Scientologist." (*Id.* at ¶ 127) Following the Breckenridge decision Scientology continued to subject
14 Armstrong, and his attorney Michael J. Flynn, to fair game . (*Id.* at ¶ 128-129) Scientology promised to
15 discontinue fair game against Armstrong and others as an inducement for settlement, and continued fair
16 game against Armstrong since the settlement. (*Id.* at ¶ 130)

17 Prior to Armstrong speaking publicly about his experiences in Scientology, it engaged him in a
18 public controversy by publishing and disseminating its own versions of his experiences, and had continued
19 thereafter to publish and disseminate its versions of his experiences. (*Id.* at ¶ 131) Scientology claims by
20 the settlement that it is free to comment on Armstrong, but that Armstrong is prohibited from commenting
21 in response. (*Id.* at ¶ 132) Scientology characterizes Armstrong's statements, which it claims it is free to
22 comment on, as "often bizarre. allegations." (*Id.* at ¶ 133)

23 G. On Its Face, And As Applied, The Agreement Obstructs Justice

24 Scientology lawyer Lawrence Heller testified that "[a]t the time of the Armstrong settlement,
25 information from Mr. Armstrong was being used in a number of cases around the world." (*Id.* at ¶ 134)
26 Scientology staff member Kenneth Long stated in a declaration executed January 19, 1995, that prior to
27 December 1986, Armstrong had testified in 15 cases for a total of 28 trial days, and had executed 28
28 declarations in 15 cases all of which concerned Scientology and/or its related entities. Long characterizes

1 Armstrong as "an anti-Church litigant and a professional witness against the Church in other litigation" and
2 "a paralegal who worked extensively on anti-Church cases." (*Id.* at ¶ 136) In Armstrong's opinion "[t]he
3 whole set of 'settlement agreements,' which are commonly known as the 'Flynn agreement,' are unfair to
4 anyone who litigates either as a defendant or plaintiff against Scientology, since these agreements remove
5 knowledgeable witnesses from the legal arena and drive up litigation costs. The 'agreements' are also
6 unfair to the public because they allow Scientology's leaders to rewrite history, lie about judicially credited
7 information, attack the sources of that information without response, and convey the idea that it is futile to
8 speak the truth or oppose their tyranny." (*Id.* at ¶ 137)

9 H. Armstrong's experiences In Scientology Are Religious In Nature

10 Scientology holds itself out as a religion which identifies its scriptures as the writings and spoken
11 words of L. Ron Hubbard. (*Id.* at ¶ 140-141) The purpose of Scientology's religious orders is to carry out
12 the religious and administrative activities of Scientology. (*Id.* at ¶ 140-141.) From 1971 through 1981,
13 Armstrong was a member of Scientology's religious order, the Sea Organization, which is the period of
14 almost all of his significant experiences with Scientology. (*Id.* at ¶ 144) Armstrong believes that his
15 experiences in Scientology are religious, that God guided him to see that the faith he had put in L. Ron
16 Hubbard and Scientology was misplaced, that God kept him from being completely taken over by
17 Scientology's indoctrination, mind control, threats and punishments, and that God kept Armstrong's heart
18 from hardening despite the way that Scientology treated him. (*Id.* at ¶ 146) Armstrong also believes that
19 God led him into L. Ron Hubbard's archives and biography project in order to study Hubbard's secret
20 papers so as to document Hubbard's duplicity and to free Armstrong's faith from Scientology where it had
21 been misplaced. (*Ibid.*) Armstrong believes that God both protected Armstrong (*Id.* at ¶ 147) let him be
22 terrorized and set up by Scientology. (*Id.* at ¶ 148) Armstrong also believes that God brought him and his
23 attorney Michael Flynn together to fight the evil of Scientology. (*Id.* at ¶ 149) Armstrong believes that
24 God speaks to him, and in 1986 founded a church. (*Id.* at ¶ 150)

25 Armstrong believes that God allowed Scientology to harass, threaten and compromise Flynn, and
26 allowed Flynn to "lose heart" and have Armstrong agree to the instant settlement agreement. (*Id.* at ¶ 151-
27 152) Armstrong believes that God allowed Flynn to respond to Armstrong's objections about the
28 impossibility of the agreement and the liquidated damages clause by saying, "Gerry, it's not worth the

1 paper it's printed on. You can't contract away your Constitutional rights" and that Scientology was paying
2 Armstrong to dismiss his lawsuit. (*Id.* at ¶ 152) Armstrong believes that God kept him from responding to
3 Scientology's violations of the settlement agreement until he was served with a deposition subpoena at
4 which time Armstrong believes that God brought him to a determination to do what he could to bring to
5 light and correct injustice and evil. (*Id.* at ¶ 155)

6 **III. ARMSTRONG HAD NO FREEDOM OF CONSENT**

7 **A. Duress And Menace**

8 An essential element of a contract is consent. (*Civil Code* § 1550 (2).) An apparent consent is not
9 real or free when it has been obtained through duress or menace. (*Civil Code* § 1567 (1)(2).) Sections
10 1569 (1) and (3) of the *Civil Code* defines duress as the (1) "[u]nlawful confinement of the person of the
11 party, . . ." or (2) "[c]onfinement of such person, lawful in form, but fraudulently obtained, or fraudulently
12 made unjustly harassing or oppressive." The cases, however, have established much broader definitions,
13 and consequently, the language of the decisions can rarely be reconciled with the statutory language. For
14 example, in *Harlan v. Gladding, McBean & Co.* (1907) 7 Cal.App. 49, duress means a condition of mind
15 produced by improper external pressure or influence that practically destroys the free will of a person and
16 causes him to do an act or enter into a contract not of his own volition. In *Sistrom v. Anderson* (1942) 51
17 Cal.App.2d 213, duress is effectuated by an unlawful threat which overcomes the will of the person
18 threatened and induces him to do an act that he is not bound to do and would not otherwise have done.
19 *Steffen v. Refrigeration Discount Corp.* (1949) 91 Cal.App.2d 494, states that the test of duress, at its
20 harshest, is what would have influenced the conduct of a reasonable man. Indeed, the modern tendency is
21 to find duress wherever one, by the unlawful act of another, is induced to make a contract under
22 circumstances which deprive him of the exercise of free will. See *Keithley v. Civil Service Board* (1970)
23 11 Cal.App.3d 443; *Balling v. Finch* (1962) 203 Cal.App.2d 413; *Gross v. Needham* (1960) 184
24 Cal.App.2d 446; *Lewis v. Fahn* (1952) 113 Cal.App.2d 95; *Sistrom*, 51 Cal.App.2d at 213. Under this
25 standard, duress is to be tested, not by the nature of the threat, but by the state of mind induced in the
26 victim. *Balling*, 203 Cal.App.2d at 413; *Lewis*, 113 Cal.App.2d at 95.

27 Menace is defined as a threat of unlawful and violent injury to a party (*Civil Code* § 1570 (2)) or
28 injury to the character of such person. (*Civil Code* § 1570 (3).)

1 "Menace" means something different from "force." Thus, a mere verbal threat to have a mother
2 arrested and to take her children from her constitutes a "menace." [Citation.] The essential function
3 played by the concept of "menace" is to avoid or vitiate consent to an act, so that the act cannot be
said to constitute an exercise of free will. [Citation.] Thus, for example, mere persuasion, which,
in fact, convinces someone to do something, does not constitute coercion or menace. [Citation.]

4 (*People v. Cicero* (1984) 157 Cal.App.3d 465, 478) If a party exerts unlawful pressure on the injured party
5 in order to deprive him of contractual volition and induce him to act to his own detriment, consent thereto
6 is said to have been vitiated by menace. (*Goldstein v. Enoch* (1967) 248 Cal.App.2d 891, 894-895)

7 Ever since Armstrong left Scientology in 1981, Scientology, having declared him an enemy, a
8 "suppressive person," subjected him to certain actions, pursuant to its fair game policy, which constituted
9 duress and menace. (Sep.St. ¶ 1, A) Such acts included assaulting him, spying on him, filing false charges
10 with the Los Angeles County District Attorney and with the Federal Bureau of Investigation, efforts to
11 entrap him, illegal surveillance and videotaping, battery with a car driven by a hired agent, attempting to
12 involve Armstrong in a freeway accident, filing false declarations, international publications falsely
13 accusing him of crime (so-called "black propaganda"), filing false contempt of court charges, and
14 disseminating confidential statements by Armstrong in pastoral counseling sessions. (*Ibid.*)

15 Prior to the execution of the settlement agreement in later 1986, Armstrong's lawyer, Michael
16 Flynn had also been the subject of the unrelenting application of Scientology's fair game policy. (Sep.St.
17 Defendant's Evidence ¶ 1, B.) Such fair game actions included infiltrating Flynn's office, paying known
18 criminals to testify falsely against him, suing him, framing him with a forgery of a \$2,000,000 check, and
19 subjecting him to an international "black propaganda" campaign. (*Ibid.*)

20 Flynn told Armstrong that if he didn't sign the agreement, Armstrong would continue to be targeted
21 for further fair game activities. (*Id.* at ¶ 1, C) Flynn also told Armstrong that the other fifteen people
22 involved in the "global settlement," of which the Armstrong agreement was a part, would continue to be
23 attacked by Scientology. (*Id.* at ¶ 1, D)

24 Given Scientology's unrelenting attacks on Armstrong, his lawyer and all the "enemies" whom Mr.
25 Flynn represented, it is clear that Armstrong's consent to the agreement was obtained by duress and
26 menace, and therefore not free.

27 B. Fraud

28 The elements of actual fraud, whether in contract or in tort, have been stated as follows: There

1 must be (1) a false representation or concealment of a material fact (or, in some cases, an opinion)
2 susceptible of knowledge, (2) made with knowledge of its falsity or without sufficient knowledge on the
3 subject to warrant a representation, (3) with the intent to induce the person to whom it is made to act upon
4 it; and such person must (4) act in reliance upon the representation (5) to his damage. (*Harding v.*
5 *Robinson* (1917) 175 Cal. 534, 538; *Wolfe v. Severns* (1930) 109 Cal.App. 476, 485; 1 Witkin, *Summary*
6 *of California Law* § 393.)

7 The act constituting actual fraud may be concealment or "any other act fitted to deceive."
8 Specifically, "[t]he suppression of that which is true, by one having knowledge or belief of the fact" is
9 actual fraud. (*Civil Code* § 1572 (3); *Williamson & Vollmer Engineering v. Sequoia Ins. Co.* (1976) 64
10 Cal.App.3d 261, 273; 1 Witkin, *Summary of California Law*, § 398.) The Restatement points out that
11 concealment is an affirmative act, equivalent to a misrepresentation (comment a), and that it usually
12 consists either in actively hiding something from the other party, or preventing him making an
13 investigation that would have disclosed the true facts (Comment b).

14 The purpose of the catch-all statement, "any other act" is suggested in *Wells v. Zenz* (1927) 83
15 Cal.App. 137.

16 "Fraud is a generic term which embraces all the multifarious means which human ingenuity can
17 devise and are resorted to by one individual to get an advantage over another. No definite and
18 invariable rule can be laid down as a general proposition defining fraud, and it includes all surprise,
19 trick, cunning, dissembling, and unfair way by which another is deceived. The statutes of
20 California expressly provide that . . . any other act fitted to deceive is actual fraud."

21 In the instant case, Scientology represented to Armstrong that a primary reason for the settlement
22 was to provide it with an opportunity to cease its fair game activities against him and others. Since it is
23 clear that Scientology not only did not cease such activities, but never intended to do so, Armstrong's
24 consent to the agreement was vitiated. (*Civil Code* § 1565, 1567)

25 C. Even If The Contract Was Not Obtained By Duress, Menace, And Fraud, Scientology
26 Cannot Enforce The "Confidentiality" Provisions Because It Breached The Express And
27 Implied Covenant That It Would Say Nothing About Armstrong After The Settlement.

28 1. **Confidentiality Was Contractually Reciprocal** ¹

¹ Armstrong asks the Court to realize that this argument was never presented to Judge Sohigian when the parties litigated the preliminary injunction in May 1992.

1 Paragraph 7-I of the agreement states that the slate between Scientology and Armstrong is wiped
2 clean and that neither party shall use in the future any information obtained regarding the other that was the
3 subject of the settled litigation. (Sep.St. 99) The parties' intent in this regard was clearly articulated by
4 Scientology attorney Lawrence Heller almost three years later.

5 On or about November 1, 1989, in the case entitled *Corydon v. Church of Scientology*
6 *International, Inc., et al.*, LASC No. C694401, Scientology attorney Lawrence E. Heller filed a motion to
7 prevent Armstrong from testifying pursuant to subpoena. In his memorandum, Heller discussed the "block
8 settlement" of which the Armstrong agreement was a part. He stated:

9 One of the key ingredients to completing these settlements, insisted upon by all parties
10 involved, was strict confidentiality respecting: (1) the Scientology ... staff member's experiences
11 with ... Scientology; (2) **any knowledge possessed by the Scientology entities concerning those**
12 **staff members ...**; and (3) the terms and conditions of the settlements themselves. Peace has
reigned since the time the interested parties entered into the settlements, all parties having exercised
good faith in carrying out the terms of the settlement, including the obligations of confidentiality.
[Underlining is original emphasis.]

13 (Sep.St. 102: Ex. 1 (A)(D) at 4:9-19.) In his sworn supporting declaration, attorney Heller testified:

14 I was personally involved in the settlements which are referred to in these moving papers
15 which transpired some two and one-half years ago. Those settlements concerned well over a dozen
16 plaintiff litigants as well as various Church of Scientology entities . . . Settlement negotiations,
17 which were not supervised by any court, were arduous and, as is often the case in these instances,
18 sometimes contentious. However, a "universal settlement" was ultimately entered into between the
numerous parties. The universal settlement provided for non-disclosure of all facts underlying the
litigation as well as non-disclosure of the terms of the settlements themselves. The non-disclosure
obligations were a key part of the settlement agreements insisted upon by all parties involved.
[Original emphasis.]

19 (Sep.St. 101: Ex. 1 (A)(D) at 8:15-9:7.)

20 The principles concerning the interpretation of contracts are well settled. Paramount among these
21 rules are the following:

22 [T]he contract must be construed as a whole and the intention of the parties must be ascertained
23 from the consideration of the entire contract, not some isolated portion [citations]; a contract
24 entered into for the mutual benefit of the parties is to be interpreted so as to give effect to the main
25 purpose of the contract and not to defeat the mutual objectives of the parties [citations]; language
26 which is inconsistent with the objective of the contract shall be rejected [citations]. Also, where a
27 contract is susceptible of two interpretations, the courts shall give it such a construction as will
28 make it lawful, operative, definite, reasonable and capable of being carried into effect if it can be
done without violating the intention of the parties [citations]. And last, but not least, the court shall
avoid an interpretation which will make a contract extraordinary, harsh, unjust, inequitable or
which would result in absurdity [citations].

(*County of Marin v. Assessment App. Bd., Marin City* (1976) 64 Cal.App.3d 316, 325.)

1 That which is necessarily implied in the language of a contract is as much a part of it as that which
2 is expressed. (*Wal-Noon Corp. v. Hill* (1975) 45 Cal.App.3d 605, 611-12.) A contract includes not only
3 what is expressly stated, but also what is necessarily implied from the language used. (*Mercer v. Lemmens*
4 (1964) 230 Cal.App.2d 167, 171.) Where express covenants fail to cover phrases necessary to make
5 workable and meaningful the covenants expressed, implied covenants may be resorted to. (*Foley v. U.S.*
6 *Paving Co.* (1968) 262 Cal.App.2d 499, 505-06.) Stipulations which are necessary to make a contract
7 reasonable are implied in respect to matters as to which the contract manifests no contrary intention.
8 (*Straus v. North Hollywood Hospital* (1957) 150 Cal.App.2d 306, 309 P.2d 541, 545.) A fair and
9 reasonable interpretation of a contractual provision, rather than one leading to harsh, unreasonable or
10 inequitable results, is always preferred. (*Ibid.*) When the law implies a promise from the terms of a written
11 contract, the promise is as much a part of the contract as if it were written out. (*Amen v. Merced County*
12 *Title Co.* (1962) 58 Cal.2d 528, 532.) Unexpressed provisions of a contract may be inferred from the
13 writing or from external facts. (*California Lettuce Growers v. Union Sugar Co.* (1955) 45 Cal.2d 474, 289
14 P.2d 785, 790.) The rules controlling the exercise of judicial authority to insert implied covenants require
15 several concurrent conditions: (1) the implication must arise from the language used or it must be
16 indispensable to effectuate the intention of the parties;² (2) it must appear from the language used that it
17 was so clearly within the contemplation of the parties that they deemed it unnecessary to express it; (3)
18 implied covenants can only be justified on the grounds of legal necessity; (4) a promise can be implied
19 only where it may be rightfully assumed that it would have been made if attention had been called to it;
20 and (5) there can be no implied covenant where the subject is completely covered by the contract. (*Adkins*
21 *v. Lear, Inc.* (1968) 67 Cal.2d 882, 905; *Addiego v. Hill* (1965) 238 Cal.App.2d 842, 847; *Walnut Creek*
22 *Pipe Distrib. v. Gates Rubber Co.* (1964) 228 Cal.App.2d 810, 815-16.)

23 Both the language of the agreement and the November 1989 declaration and memorandum of
24 Scientology attorney Heller illustrate that confidentiality was indispensable to effectuate the intentions of

25
26 ² One vital element in the construction of a contract is the intention of the parties in relation to its
27 execution. When determining this intention, the court may look to the circumstances surrounding the
28 making of the agreement, including the object, nature, and subject matter of the writing, and thereby place
itself for this purpose in the same situation in which the parties found themselves at the time of contracting.
(*Dunne & Gaston v. Keltner* (1975) 50 Cal.App.3d 560, 564.)

1 both Armstrong and Scientology. Indeed, a review of the agreement makes it clear that both parties
2 desired to terminate their disputatious interactions with one another and leave one another alone. There is
3 nothing in the agreement that states that Scientology could make whatever public statements it wanted to
4 about Armstrong, but that he would have to remain silent no matter what aspersions were cast his way. To
5 impose such a condition would make no sense because it would allow Scientology to slander Armstrong
6 and literally re-write history in order to suit its own ends without any regard to truth or accuracy.
7 Armstrong's history in the litigation before Judge Breckenridge illustrates a profound rejection of any such
8 result.³ Thus, under the circumstances there is a legal necessity for the Court to imply that the settlement
9 terms were reciprocal because it would be grossly unfair to Armstrong since it was never his intent to have
10 his own personal history revised according to the predilections of Scientology, and ultimately be jailed
11 after a Court issued injunctive relief based on the agreement that he could never respond thereto.

12 The agreement expressly states that Armstrong was not to discuss his knowledge or experience
13 with respect to Scientology. Although the agreement is silent whether Scientology was similarly
14 prohibited from discussing its knowledge of Armstrong, Mr. Heller was not. Therefore, to imply that the
15 parties' intention was for Scientology to be subject to the same confidentiality as was Armstrong does not
16 contravene any express term of the agreement and conforms with Mr. Heller's initial representations to the
17 judiciary regarding the intent of the agreement. To imply reciprocity would not violate the intent of the
18 parties. Indeed, not to imply such a term would violate the expectations of Armstrong and deny him the
19 fruits of his bargain. "If without the implied obligation the fruits of the contract would be denied to one of
20 the parties, the intent that such an obligation should not exist must clearly appear from the express terms of
21 the contract." (*Bergum v. Weber* (1955) 136 Cal.App.2d 389, 288 P.2d 623, 626.) Moreover, the "clean
22 slate" provision supports the conclusion that the confidentiality provisions were reciprocal, and rebuts the
23 conclusion that the parties intended that Scientology could say whatever it wanted about Armstrong, and
24 that it could sue him if he tried to respond.

25 **2. Scientology Breached The Implied Covenants of**
26 **Confidentiality And Of Good Faith And Fair Dealing**

27
28 ³ See generally, Ex. 1(A)(A), Memorandum of Intended Decision, *Church of Scientology of California v. Armstrong*, Los Angeles County Superior Court, Case No. C 420153.

1 In addition to the duties imposed upon the parties to a contract by the terms of their agreement, the
2 law implies in every contract a covenant of good faith and fair dealing. (*Seaman's Direct Buying Service,*
3 *Inc. v. Standard Oil Co.* (1984) 36 Cal.3d 752, 768.) The implied promise requires each contracting party
4 to refrain from doing anything to impair the right of the other to receive the benefits of the agreement.
5 (*Betts v. Allstate Ins. Co.* (1984) 154 Cal.App.3d 688, 705.) This covenant not only imposes upon each
6 contracting party the duty to refrain from doing anything which would render performance of the contract
7 impossible by any act of his own, but also the duty to do everything that the contract presupposes that he
8 will do to accomplish its purpose. (*McWilliams v. Holton* (1967) 248 Cal.App.2d 447, 451.) The precise
9 nature and extent of the duties imposed by such implied promise will depend upon the nature and purpose
10 of the underlying contract and the legitimate expectations of the parties. (*Tollefson v. Roman Catholic*
11 *Bishop* (1990) 219 Cal.App.3d 843, 854.) Thus, regardless of its origin, the covenant of good faith and fair
12 dealing is designed to effectuate the intentions and reasonable expectations of the parties reflected by
13 mutual promises within the contract. (*Ibid.*)

14 With respect to the agreement at bar, Scientology acted in bad faith by unfairly depriving
15 Armstrong of the benefit of the bargain of the settlement agreement. Rather than leave its history with
16 Armstrong to rest silently in the past insulated by mutual promises of confidentiality, Scientology
17 resurrected its old conflict with Armstrong when to do so suited whatever was its particular litigation or
18 public relations strategy of the moment. Such conduct violates the implied covenant of good faith and fair
19 dealing and excuses counter-performance by Armstrong.

20 **3. Due To Its Breaches, Scientology Cannot Enforce**
21 **Reciprocal Provisions Of The Agreement Against Armstrong**

22 A party complaining of a breach of contract is not entitled to recover therefor unless he has fulfilled
23 his obligations. He who seeks to enforce a contract must show that he has complied with the conditions
24 and agreements of the contract on his part to be performed. (*Pry Corporation of America v. Leach* (1960)
25 177 Cal.App.2d 632, 639.) A covenant is a promise to render some performance. A breach of covenant
26 excuses the other party's performance. (Witkin, *1 Summary of California Law* (1987) Contracts, § 723,
27 757.) Thus, one who himself breaches a contract cannot recover for a subsequent breach by the other
28 party, (*Silver v. Bank of America* (1941) 47 Cal.App.2d 639, 118 P.2d 891, 894), because a party to a

1 contract need not tender performance if the conduct of the other party amounts to a refusal to perform.
2 (*United California Bank v. Maltzman* (1975) 44 Cal.App.3d 41, 52.)

3 Scientology repeatedly breached its covenant to remain silent about Armstrong. (Sep.St. 105 (D-
4 H) Scientology cannot have it both ways.

5 D. Scientology Has Not Met Its Burden Which Would Entitle It To Injunctive Relief
6 Because It Is Not Entitled To The Equitable Remedy Of Specific Performance

7 As the basis for injunctive relief, Scientology relies upon the legal conclusion that the agreement
8 can be specifically enforced. (Moving Memorandum at p. 16:3-25.) Upon applying Civil Code section
9 3391 to the circumstances of this case, however, Armstrong cannot be compelled to specifically perform
10 the agreement. ⁴ An injunction cannot be granted to prevent the breach of a contract, the performance of
11 which would not be specifically enforced. (*Thayer Plymouth Center, Inc. v. Chrysler Motors Corp.* (1967)
12 255 Cal.App.2d 300, 304, 63 Cal.Rptr. 148.)

13 It is rote that "equity will not lend its aid to enforce contracts which upon their face are so
14 manifestly harsh and oppressive as to shock the conscience; it must be affirmatively shown that such
15 contracts are fair and just." (*Jacklich v. Baer* (1943) 57 Cal.App.2d 684, 135 P.2d 179, 183.) The rationale
16 for this rule is grounded in a common sense recognition of the rules of fair play, not fair game.

17 It is said . . . that the doctrine that he who seeks equity must do equity means that the party asking
18 the aid of the court must stand in a conscientious relation to his adversary; that the transaction from
19 which his claim arises must be fair and just and that the relief itself must not be harsh and
20 oppressive upon the defendant. And that specific performance will always be refused when a
contract itself is unfair, one-sided, unconscionable, or affected by any other such inequitable
feature, and when specific performance would be oppressive upon the defendant, or would prevent
the enjoyment of his own rights, or would in any other manner work injustice.

21 (*Id.*, 135 P.2d at 184; *Chriddenden v. Hansen* (1943) 59 Cal.App.2d 56, 138 P.2d 37, 38.)

22
23 ⁴In full, Civil Code section 3391 states:

"WHAT PARTIES CANNOT BE COMPELLED TO PERFORM. Specific performance
cannot be enforced against a party to a contract in any of the following cases:

- 24 1. If he has not received an adequate consideration for the contract;
- 25 2. If it is not, as to him, just and reasonable;
- 26 3. If his assent was obtained by the misrepresentation, concealment, circumvention, or unfair
practices of any party to whom performance would become due under the contract, or by any
promise of such party which has not been substantially fulfilled; or
- 27 4. If his assent was given under the influence of mistake, misapprehension, or surprise, except
28 that where the contract provides for compensation in the case of mistake, a mistake within the scope
of such provision may be compensated for, and the contract specifically enforced in other respects,
if proper to be so enforced."

1 The burden is on the plaintiff to plead and prove "that the contract is not inequitable or
2 unconscionable" in order to support a decree of specific performance. (*Quan v. Kraseman* (1948) 84
3 Cal.App.2d 550, 191 P.2d 16, 17.)

4 The primary issue with respect to fairness is whether it is fair for the Court to support
5 Scientology's position that it purchased Armstrong's First Amendment Right to Free Speech with respect to
6 activities (concerning which Scientology would otherwise assert falls within its First Amendment Right to
7 Free Exercise of Religion because it involves the time Armstrong was a practicing Scientologist) which for
8 Armstrong constitutes an unquestionably religious experience twelve years in duration, for \$800,000. That
9 is an undeniably large sum of money. Scientology, however, did not purchase Armstrong's silence without
10 also giving up its right to talk about him. When determining what Scientology's money bought, the
11 court must consider the overall context of the litigation and the relations of the parties in December 1986.
12 In June 1984, Judge Breckenridge had severely condemned Scientology when holding for defendant
13 Armstrong in the original litigation.⁵ Armstrong's cross-complaint seeking compensation for
14 Scientology's fair game actions against him involved serious charges of heinous misconduct was set for
15 trial in early 1987. In July 1986 a Los Angeles County Superior Court jury had awarded Lawrence
16 Wollersheim \$5,000,000 in compensatory damages and \$25,000,000 in punitive damages against
17 Scientology. Mr. Heller confirmed that the intention of the parties in the settlement was not only that
18 Armstrong not to talk about Scientology, but also that Scientology would not talk about him. In light of
19 these facts, the issue no longer is as clear cut as Scientology presents: it bought Armstrong's First
20 Amendment Free Speech Rights for \$800,000. Indeed, it appears that Scientology bought a dismissal of a
21 potentially explosive cross-complaint and agreed to bury the hatchet.

22 Scientology does not make a single allegation that Armstrong broke his covenant of silence prior to
23 1991. The record is replete, however, with Scientology's breaches of its obligation to maintain silence as
24 to Armstrong. It would be fundamentally unreasonable and unfair, in light of all the facts, for a Court to
25 allow Scientology to say whatever it wants about Armstrong, and to require Armstrong to remain mute in
26

27 ⁵ Judge Breckenridge also stated that "Defendant and his counsel are free to speak or communicate
28 upon any of Defendant Armstrong's recollections of his life as a Scientologist or the contents of any exhibit
received in evidence or marked for identification ..." (Ex. 1 (A)(A) at 3:3-6)

1 the face of such attacks. Since Scientology has not done equity under the terms of the agreement as
2 interpreted by its lead settlement counsel, he cannot ask this Court to enjoin Armstrong from speaking
3 about it.

4 E. The Agreement Obstructs Justice

5 In addition to the arguments which relate to the unenforceability of the agreement, it is also void
6 against public policy. What Scientology is seeking to do is to remove Armstrong, and all others like him,
7 from playing any role in the truth seeking process, whether such process be in competition found in the
8 public marketplace of ideas, or in the truth-seeking forum provided by the judiciary. Thus, by eliminating
9 those who are knowledgeable of its history and practices, Scientology seeks, quite literally, to shape public
10 opinion and skew judicial decision-making by writing its own script. Thus, with no regard for the truth,
11 Scientology may rest secure in the knowledge that it has purchased the silence of witnesses adverse to it
12 and the Courts will enforce it.

13 The consideration of a contract must be lawful. (*Civil Code* § 1607.) If any part of the
14 consideration is unlawful the entire contract is void. (*Civil Code* § 1608.) Consideration is unlawful if it is
15 contrary to an express provision of law, contrary to the policy of express law, though not expressly
16 prohibited, or otherwise contrary to good morals. (*Civil Code* § 1667.) The object of the contract is the
17 thing which it is agreed, on the party receiving the consideration, to do or not to do. (*Civil Code* § 1595.)
18 The object must be lawful when the contract is made. (*Civil Code* § 1596.) Whether or not a contract in a
19 given case is contrary to public policy is a question of law to be determined from the circumstances of each
20 particular case. (*Bovard v. American Horse Enterprises* (1988) 201 Cal.App.3d 832, 838; *Kallen v. Delug*
21 (1984) 157 Cal.App.3d 940, 951; *Russell v. Soldinger* (1976) 59 Cal.App.3d 633, 642.) It is a
22 fundamental rule of construction of contracts that all applicable laws in existence when an agreement is
23 made, which laws the parties are presumed to know and have in mind, necessarily enter into the contract
24 and form a part of it without any stipulation to that effect, as if they were expressly referred to and
25 incorporated in the agreement. (*People v. Hadley* (1967) 257 Cal.App.2d Supp. 871, 881.) "Agreements
26 to suppress evidence have long been held void as against public policy, both in California and in most
27 common law jurisdictions." (*Williamson v. Superior Court* (1978) 21 Cal.3d 829, 836-37.) In *Brown v.*
28 *Freese* (1938) 28 Cal.App.2d 608, the California Court of Appeal adopted section 557 of the Restatement

1 of the Law of Contracts prohibiting as illegal those agreements which sought to suppress the disclosure of
2 discreditable facts. The court stated:

3 A bargain that has for its consideration the nondisclosure of discreditable facts . . . is illegal. . . .
4 In many cases falling within the rule stated in the section the bargain is illegal whether or not the
5 threats go so far as to bring the case within the definition of duress. In some cases, moreover,
6 disclosure may be proper or even a duty, and the offer to pay for nondisclosure may be voluntarily
7 made. Nevertheless the bargain is illegal. Moreover, even **though the offer to pay for
nondisclosure is voluntarily made and though there is not duty to make disclosure or
propriety in doing so, a bargain to pay for nondisclosure is illegal.** [Emphasis added.]

8 (*Brown* 28 Cal.App.2d at 618.) *Civil Code* § 1668 states:

9 All contracts which have for their object, directly or indirectly, to exempt anyone from
10 responsibility for his own fraud, or willful injury to the person or property of another, or
11 violation of law, whether willful or negligent, are against the policy of the law.

12 Since an agreement to suppress evidence or to conceal a witness is illegal, (*Witkin*, § 611 at 550.
13 *Penal Code* §§ 136, 136.1, and 138; *Mary R. v. B. & R. Corp.* (1983) 149 Cal.App.3d 308, 196 Cal.Rptr.
14 871; *Tappan v. Albany Brewing Co.* (1889) 80 Cal. 570, 571-572), and the combined effect of the "global
15 settlement" has been to remove the availability as witnesses of most former high-ranking Scientologists,
16 such can "lead to subtle but deliberate attempts to suppress relevant evidence." (*Williamson*, 21 Cal.3d at
17 838.)

18 Thus, where a contract is made either (1) to achieve an illegal purpose, or (2) by means of
19 consideration that is not legal, the contract itself is void. *Witkin, Summary of California Law* (9th Ed.
20 1987) Vol. 1, Contracts, § 441 at 396.

21 Illegal contracts are matters which implicate public policy. Public policy has purposefully been a
22 "vague expression . . . [that] has been left loose and free of definition in the same manner as
23 fraud." (*Safeway Stores v. Hotel Clerks Intn'l Ass.* (1953) 41 Cal.2d 567, 575) Public policy means
24 "anything which tends to undermine that sense of security for individual rights, whether of personal liberty
25 or private property, which any citizen ought to feel is against public policy." (*Ibid.*) Therefore, "[a]
26 contract made contrary to public policy may not serve as the foundation of any action, either in law or in
27 equity, [Citation] and the parties will be left where they are found when they come to court for relief.
28 [Citation.]" (*Tiedje v. Aluminum Paper Milling Co.* (1956) 46 Cal.2d 450, 454)

Based on Judge Breckenridge's decision alone, it is clear what Scientology seeks to suppress. The
judiciary should not be used for such a purpose.

1 F. The First Amendment Precludes Enforcement Of The Agreement

2 Judge Breckenridge found Armstrong to possess a "dedication to the truth" (Ex. 1 (A)(A) at 5:9),
3 and to be "credible [and] extremely persuasive." (*Id.* at 7:9-12) He found that "the Church or its minions
4 is fully capable of intimidation or other physical or psychological abuse if it suits their ends." (*Id.* at 8:3-5)
5 Armstrong communicates with God and God has guided Armstrong to continue his devotion to the truth at
6 whatever cost. Armstrong believes that his entire relationship with Scientology over the past 25 years to
7 have been divinely inspired, and that God has called upon Armstrong to speak out and tell the truth about
8 Scientology in order to protect people from fair game. (Sep.St. 139-174) Scientology, a religion, is asking
9 the Court to use its power to censor Armstrong's speech regarding his experiences while he was a member
10 of the Scientology religion, concerning which Armstrong says he was misled into believing and concerning
11 which error he says God enlightened him. ⁶ Since fair game is a sectarian scripture of the Scientology
12 religion which includes deception and character assassination as preferred methods of conduct, for the Court
13 to enforce the agreement and silence Armstrong is to prefer Scientology's malevolent sectarianism over
14 Armstrong's right to religiously based speech. It must be remembered that Armstrong has done nothing
15 more than speak. To enforce the agreement not only would violate Armstrong's First Amendment right to
16 Free Speech and Free Exercise, it would also violate the anti-establishment clause.

17 The First Amendment guarantees of freedom of religion establish liberty of conscience as an
18 abiding national principle. The realm of individual belief is wholly beyond the power of the state;
19 "[h]eresy trials are foreign to our Constitution." (*United States v. Ballard* (1944) 322 U.S. 78, 86) But
20 constitutional protection is not limited to matters of belief. Guaranteeing the "the free exercise" of
21

22 ⁶ Armstrong has made a number of religiously-based claims which appear on their face to be
23 incredible, the foremost of which is that God told him, in answer to his prayers, to give away all his
24 worldly wealth, which he did. Such beliefs and conduct, however difficult to accept, should not result in
25 the contamination of the Court's attitude toward Armstrong. As stated by our country's highest court, "The
26 religious views espoused by [Armstrong] might seem incredible, if not preposterous, to most people. But if
27 those doctrines are subject to a trial before a jury charged with finding their truth or falsity, then the same
28 can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a
forbidden domain. The First Amendment does not select any one group or any one type of religion for
preferred treatment. It puts them all in that position. [Citation.] 'With man's relations to his Maker and the
obligations he may think they impose, and the manner in which an expression shall be made by him of his
belief on those subjects, no interference can be permitted, provided always the laws of society, designed to
secure its peace and prosperity, and the morals of its people, are not interfered with.'" (*United States v.*
Ballard (1943) 322 U.S. 78, 87)

1 religions, the words of the Constitution's text also shields conduct undertaken for reasons of faith. "[T]he
2 right to the free exercise of religion unquestionably encompasses the right to preach, proselyte, and
3 perform other similar religious functions." (*McDaniel v. Paty* (1978) 435 U.S. 618, 626 (Burger, C.J.)
4 (plurality opinion), See also *Wisconsin v. Yoder* (1972) 406 U.S. 205, 220 ["there are areas of conduct
5 protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to
6 control, even under regulations of general applicability"]).

7 The Establishment Clause, providing that the state "shall make no law respecting an establishment
8 of religion ...," (First Amendment to the U.S. Constitution) was a product of religion intolerance
9 experienced by our forebears both in Europe and in the New World. Those who came into conflict with
10 the dominant, government-endorsed religions suffered fines, imprisonment and even death. (*Everson v.*
11 *Board of Education* (1947) 330 U.S. 1, 9) In reaction to this religious intolerance, the framers of the
12 Constitution concluded that individual religious liberty could be achieved best under a government which
13 was stripped of all power to tax, support or otherwise assist any or all religions, or to interfere with the
14 beliefs of any religion or group. (*Id.* 330 U.S. at 11) The Establishment Clause is far more than a mere
15 prohibition upon the formal establishment of a state church:

16 The "establishment of religion" clause of the First Amendment means at least this: Neither
17 a state nor a federal government can set up a church. Neither can pass laws which aid one
18 religion, aid all religions, or prefer one religion over another. Neither can force nor
19 influence a person to go to or remain away from church against his will or force him to
20 profess a belief or disbelief in any religion. No person can be punished for entertaining or
21 professing religious beliefs or disbeliefs, for church attendance or non-attendance.

22 (330 U.S. at 15-16) Thus, the First Amendment's "anti-establishment clause" (*Wollersheim v. Church of*
23 *Scientology* (1989) 212 Cal.App.3d 872, 884) guarantees citizens that the government will not use its
24 resources to impose religion on us. (*Ibid.*) Since "dead agenting" Armstrong by means of "black
25 propaganda" is an application of fair game, as is the use of the law to destroy critics, what is at issue
26 here is Scientology's sectarian doctrine and practice to neutralize "suppressive person" defendant
27 Armstrong. Since this strategy is being exercised by means of judicial force, the Court is preferring the
28 Scientological approach to Truth over the approach employed by Armstrong. Such is not only
unconstitutional, it is wrong.

IV. CONCLUSION

1 Based on the foregoing, Defendant Gerald Armstrong respectfully requests that the motion for
2 summary adjudication should be denied.

3
4 DATED: September 18, 1995

HUB LAW OFFICES

5
6
7 By: 

FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

1 **PROOF OF SERVICE**

2 I am employed in the County of Marin, State of California. I am over the age of eighteen years and
3 am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San
4 Anselmo, California. I served the following documents:

5 DEFENDANT'S OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION ON TWENTIETH
6 CAUSE OF ACTION; ARMSTRONG'S SEPARATE STATEMENT OF DISPUTED AND
7 UNDISPUTED FACTS IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION OF THE
8 TWENTIETH CAUSE OF ACTION ON THE SECOND AMENDED COMPLAINT; DEFENDANT'S
9 EVIDENCE IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION ON TWENTIETH
10 CAUSE OF ACTION

11 on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed
12 envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo,
13 California:

14 Andrew Wilson, Esquire
15 WILSON, RYAN & CAMPILONGO
16 235 Montgomery Street, Suite 450
17 San Francisco, California 94104

BY HAND

18 LAURIE J. BARTILSON,ESQ.
19 Bowles & Moxon
20 6255 Sunset Boulevard
21 Suite 2000
22 Los Angeles, California 90028

23 [X] (Personal Service) I caused such envelope to be delivered by hand to the offices of the
24 addressee.

25 [X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the
26 United States Mail at San Anselmo, California.

27 [X] (State) I declare under penalty of perjury under the laws of the State of California
28 that the above is true and correct.

DATED: September 18, 1995

